Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	

REPLY COMMENTS OF PILGRIM TELEPHONE, INC.

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Executive Summary

The record in response to the *CPP Rulemaking Notice* provides the Commission with strong support for moving forward with the actions necessary to give Calling Party Pays a fair test in the telecommunications marketplace. Parties representing a range of interests and points of view have found common ground in agreeing that CPP has the potential to benefit consumers, promote competition in local exchange and wireless markets, and serve other public policy objectives.

Commenting parties have also presented convincing evidence and arguments demonstrating that CPP simply cannot be fairly tested in the marketplace unless the Commission takes the steps necessary to ensure that billing and collection services provided by local exchange carriers are available for CPP at reasonable rates and on reasonable terms and conditions. Many parties have shared Pilgrim's view that LEC billing and collection is critical to CPP because the deficiencies of other alternatives would severely impede the ability of CPP providers to bill and collect for their service, thus threatening the viability of CPP and jeopardizing the consumer and competitive benefits that CPP promises to promote.

Given the inadequacy of these alternatives, and the power that LECs exercise in the market for CPP billing and collection, the Commission has a firm policy basis for requiring that these capabilities must be made available to CPP providers, and the Commission can do so without disturbing its earlier decisions regarding the detariffing of LEC billing and collection services in other markets.

The need for Commission action to require LEC billing and collection is made more compelling by the fact that opponents have fallen far short in their efforts to dissuade the Commission from such a course. They have almost uniformly failed to address facts and arguments that demonstrate the lack of any alternatives to LEC billing and collection for CPP, nor have they considered it necessary to put any information or evidence in the record regarding the costs that LECs would incur if required to provide billing and collection. If opponents of LEC billing and collection believe that the Commission should turn away from such a requirement because it would impose excessive costs upon LECs, or because LECs would be hampered in their efforts to recoup these costs, then these opponents should come forward with facts and figures proving their case. Instead, they have been satisfied with a virtually empty record.

The Commission's interest in protecting consumers by providing sufficient notification of pricing and other information to calling parties has also gained substantial support in the record, with many parties recognizing the benefits to be gained for consumers by the provision of complete and accurate rate information to calling parties before they complete calls to CPP subscribers. Parties who support lesser measures to inform calling parties of the fact that they are calling CPP subscribers and will incur charges for the calls, have failed to explain why the Commission should place consumer protection at risk by opting for the various "streamlined" notification approaches these parties advocate.

Pilgrim also supports the cooperative efforts of Commission and State public utilities commission staff to develop a standardized text that could be used in connection with the Commission's proposed notification requirement. This proposed text, which is similar to options presented by Pilgrim in our comments, would ensure that calling parties uniformly receive pricing and other information pertinent to their making informed consumer choices. Pilgrim also suggests that

the standardized text should be used as a "safe harbor" to secure compliance with the Commission's notification requirements, but that carriers also be given flexibility to add to the announcement to advise the calling party of different billing options or the availability of enhanced services (such as voicemail) to contact the CPP subscriber if he or she is not available to answer the call.

The Commission should not proceed, however, with any steps to shackle CPP providers with regard to their pricing for CPP services. The objective of these providers to stimulate traffic on their systems through the successful introduction and implementation of CPP gives them sufficient incentive to price their offerings in a manner that will gain marketplace acceptance. In the unlikely event that these incentives do not prove to work sufficiently, the Commission can later examine steps it may take to ensure reasonable pricing for CPP offerings.

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Pilgrim Telephone, Inc. (Pilgrim), by counsel, and pursuant to Section 1.415 of the Commission's Rules,[1] and a Notice of Proposed Rulemaking in the above-captioned proceeding,[2] hereby submits its reply comments.

I. INTRODUCTION

Calling Party Pays (CPP) provides the Commission with an opportunity to take a significant step in advancing its efforts to promote competition between wireless and wireline carriers in the local exchange marketplace as well as other statutory objectives.

Congress, in enacting the Telecommunications Act of 1996,[3] sought to establish a pro-competitive, deregulatory national policy framework designed to accelerate the delivery of inno-

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[1] 47 C.F.R. § 1.415.

[2] Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137, released July 7, 1999 (*CPP Rulemaking Notice*). The proceeding was initiated by the Commission two years earlier. *See* Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17693 (1997) (*CPP Notice of Inquiry* or *NOI*).

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934 ("Communications Act" or "Act").

vative technologies and services to American consumers by promoting competition in all telecommunications markets.[4]

The Commission has noted that competition in local exchange markets is "desirable not only because of the benefits competition will bring to consumers of local services, but also because competition will eventually eliminate the incumbent [local exchange carriers'] control of bottleneck facilities and thereby permit freer competition in other telecommunications services that must interconnect with the local exchange." [5]

Calling Party Pays fits into this competitive mosaic. A legion of commenters responding to the *CPP Rulemaking Notice* has agreed with the Commission's tentative conclusion that there is a role for CPP to play in benefiting consumers by breaking the grip of the incumbent local exchange carriers (ILECs) in local markets. The record presents substantial and convincing evidence that wireless carriers can use CPP as an important tool to promote their strategies of entry into local exchange markets.

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[4] *See* Joint Statement of Managers, H.R. CONF. REP. NO. 104-458, 104th Cong., 2d Sess. 113 (1996). *See also* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15505 (para. 1) (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom*. Competitive Telecom. Ass'n v. Federal Comm. Comm'n, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom*. Iowa Utils. Bd. v. Federal Comm. Comm'n, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part, and remanded sub nom*. AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997), *appeals docketed*, Second Further Notice of Proposed Rulemaking, FCC 99-70, released Apr. 16, 1999 (*UNE Further Notice*).

[5] Promotion of Competitive Networks in Local Telecommunications Markets and Implementation of Local Competition Provisions in the Telecommunications Act of 1996, WT Docket No. 99-217, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking, FCC 99-141, released July 7, 1999, at para. 2 (footnote omitted).

But the record also brings into sharp definition the fact that CPP simply cannot work in the marketplace without LEC billing and collection services. If the Commission decides (as it must on this record) that CPP deserves a fair test in the marketplace because it has a strong potential to advance competition and benefit consumers, but then decides to refrain from requiring LECs to provide billing and collection, then the Commission's second decision will swallow up the first.[6]

Pilgrim believes that the record supports a series of conclusions that clear the path for the Commission to require that LECs must make their billing and collection services available to Commercial Mobile Radio Service (CMRS) carriers for use in connection with offering CPP. The Commission has ample statutory authority to take such a step, and it can invoke this authority without disturbing its earlier decisions to deregulate LEC billing and collection.

Further, the record provides abundant support for a conclusion by the Commission that requiring the provision of LEC billing and collection constitutes sound public policy. There are no credible arguments that the LECs do not have the capabilities needed to provide billing and collection for CPP, and opponents of such a requirement have utterly failed to present any arguments or evidence to support their speculative views that CMRS carriers can turn to other alternatives to bill and collect for CPP.

Moreover, the opponents of LEC billing and collection requirements have refused to come forward with any evidence or persuasive arguments to support their conclusory assertions that the provision of billing and collection services would impose substantial burdens and costs upon the

[6] *See Local Competition Order*, 11 FCC Rcd at 15509 (para. 12) ("[O]ur obligation . . . is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.").

LECs, or that the LECs would face the significant risk of being unable to recoup these costs. Pilgrim believes, to the contrary, that the Commission should establish mechanisms designed to ensure that LECs are not able to leverage their market power to extract excessive payments from CMRS providers for the LECs' billing and collection services.

In addition to LEC billing and collection, another key ingredient for the success of CPP in the marketplace is a workable calling party notification system that enables consumers to make informed choices while also avoiding any unnecessary requirements or regulatory burdens that would hamper the introduction or operation of CPP services. The Commission proposed such a system in the *CPP Rulemaking Notice* and the record now provides a solid basis of support for moving forward to prescribe and implement the notification mechanisms the Commission has designed. The record also provides strong support for the conclusion that the Commission would be ill-advised to attempt to supplement or replace its proposed calling party notification system with any other devices, such as the use of unique access codes or dialing patterns for CPP, that would provide inadequate notice to consumers and the use of which would be inconsistent with other Commission policies.

Finally, Pilgrim believes that, just as the Commission can rely on the marketplace to test the worth of CPP once the Commission clears away impediments sought to be erected by ILECs who have a vested competitive interest in putting their thumbs on the scale of this marketplace test, the Commission can also rely on the marketplace to produce reasonable CPP rates that will not disadvantage calling parties. In this regard, Pilgrim agrees with the many commenters who suggest that it would be premature and ill-considered for the Commission to take up the task of regulating CPP rates.

II. THE BENEFITS OF ENABLING CALLING PARTY PAYS TO BE TESTED IN THE MARKETPLACE OUTWEIGH THE RISKS

Pilgrim believes that the Commission, in initiating this rulemaking, has taken on the responsibility of making a series of judgments about Calling Party Pays. Initially, the Commission must determine if CPP has the potential to benefit consumers and competition. Next, the Commission must resolve whether any regulatory action is necessary to enable wireless carriers to offer CPP. The Commission then must evaluate the nature and extent of any countervailing burdens that could be imposed on any segments of the telecommunications industry by the Commission's taking action. Finally, the Commission must assess whether CPP could be detrimental to any classes of consumers, and whether regulatory action could effectively protect these consumers from harm.

In framing its public interest judgment, the Commission must complete its analysis by reaching conclusions about each of these various considerations and then deciding whether the benefits or the costs of CPP weigh heavier in the scales. It is important to recognize and emphasize that this is a comparative process — if the "downside" risks of fostering the introduction of CPP are not great, then the degree of the Commission's certitude that CPP will succeed in the marketplace and benefit competition and consumers does not need to be as great.

Pilgrim believes that the "risk" side of the equation is not problematic. The Commission can point to considerable evidence in the record that LECs will not be disadvantaged by a requirement to provide billing and collection for CPP. Further, the Commission has proposed effective consumer safeguards, the adoption of which will ensure that consumers can make informed decisions regarding whether to incur or avoid charges associated with CPP.

All of this goes to say that the Commission does not need to clear a high hurdle in order to conclude that the potential benefits of CPP are worth pursuing. While it is true that no one can be certain regarding whether CPP will succeed in the marketplace, the record in response to the *CPP Rulemaking Notice* supports a reasoned judgment by the Commission that the public interest will be served by enabling the marketplace test to go forward.

III. CALLING PARTY PAYS WILL PROMOTE COMPETITION AND BENEFIT CONSUMERS

Pilgrim believes that the evaluative task facing the Commission in this rulemaking is made considerably easier by the fact that the record buttresses the reasonableness of a predictive judgment that CPP will promote competition and benefit consumers. There is overwhelming support in the record for the introduction of CPP services.[7] Parties have recognized that CPP has the po-

[7] *See, e.g.*, American Association of Retired Persons (AARP) Comments at 6 (CPP is "an idea whose time has come."); AirTouch Communications (AirTouch) Comments at 6; America One Communications (America One) Comments at 2 (CPP provides an opportunity for CMRS providers to offer competitive alternatives to LECs' local services); AT&T Corp. (AT&T) Comments at 1; Cable & Wireless USA, Inc. (Cable & Wireless) Comments at 2 (the CPP option would be beneficial to CMRS subscribers; the Commission's goal of creating a CMRS option that would make wireless service more competitive with wireline service is laudable); Cellular Telecommunications Industry Association (CTIA) Comments at 2-3; Celpage, Inc. (Celpage) Comments at 4; Cincinnati Bell Telephone Company (Cincinnati Bell) Comments at 2; Coalition To Ensure Responsible Billing (Billing Coalition) Comments at 2; Competitive Policy Institute (CPI) Comments at 2; Connecticut Department of Public Utility Control (Connecticut DPUC) Comments at 1; GTE Service Corporation (GTE) Comments at 1; MCI WorldCom (MCIW) Comments at 1; Motorola Inc. (Motorola) Comments at 2-3; National Telephone Cooperative Association (NTCA) Comments at 1; Nextel Communications, Inc. (Nextel) Comments at 2; Omnipoint Communications (Omnipoint) Comments at 2; Personal Communications Industry Association (PCIA) Comments at 1; Rural Telecommunications Group (RTG) Comments at 2; Telecommunications Resellers Association (TRA) Comments at 4; United States Cellular Corporation (USCC) Comments at 1; VoiceStream Wireless Corp. (VoiceStream) Comments at 2-3. *See also* Global Wireless Consumers Alliance (GWCA) Comments at 1 (unpaginated) (does not oppose the concept of CPP); United States Telephone Association (USTA) Comments at 1 (does not oppose voluntary CPP arrangements); Utility Consumers Action Network (UCAN) Comments at 1 (unpaginated) (does not oppose concept of CPP).

(continued . . .)

tential to change the manner in which consumers use wireless services. In fact, PCIA has placed evidence in the record that CPP has been shown to promote greater usage of wireless handsets, that CPP customers are more willing to give out their mobile phone numbers, and that CPP has been well received by wireless customers.[8]

We agree with claims made by commenters that CPP is an innovative service that has the potential to accelerate the continuing transformation of mobile telephony into a service that appeals to a broader cross-section of consumers,[9] to stimulate greater usage of wireless services,[10] to offer consumers lower prices and more choice in the telecommunications marketplace,[11] to increase wireless penetration into local exchange markets in competition with ILECs,[12] to offer an appealing alternative mobile service to consumers with lower incomes,[13] and to lead to "a more equitable balance of calls to and from wireless telephone customers."[14] We also agree with Air-

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[8] PCIA Comments at 10.

[9] *See* AirTouch Comments at 6.

[10] *See* Motorola Comments at 3; CTIA Comments at 6 (CPP will create an incentive for the publication of mobile numbers, thus expanding the universe of numbers calling parties can call).

[11] *See* PCIA Comments at 9.

[12] *See* AirTouch Comments at 6; America One Comments at 2; Connecticut DPUC Comments at 1; CPI Comments at 3; PCIA Comments at 11.

[13] *See* CTIA Comments at 2-3.

[14] *See* PCIA Comments at 14.

Touch that associating airtime charges with the calling party, *i.e.*, the cost causer, promotes economic efficiency,[15] and will thus promote price reductions and other consumer benefits.

CTIA puts the case for CPP squarely, arguing that "CPP has the ability to empower consumers. It places decision-making responsibility and control within the hands of consumers — both calling and called parties."[16] CTIA notes, for example, that wireless subscribers who select CPP using Advanced Intelligent Network (AIN) technology, will have the option to designate a Personal Identification Number (PIN) code which the subscriber can distribute to preferred callers, to permit call completion without the calling party being billed. Subscribers will also be able to designate a pre-selected group of preferred phone numbers from which the called party will pay for the call. Finally, subscribers will have the option to use a toggle capability in the handset to turn the CPP function on or off.[17] Thus, CPP can be designed in a manner that gives substantial flexibility to CPP subscribers, and this flexibility will work to meet the needs of both subscribers and calling parties.

Parties attempting to persuade the Commission to turn its back on CPP have neither evidence nor reasonable arguments to support their importunities. Some commenters argue, for example, that the wireless industry has been marked by robust growth and that this fact, by itself, should compel the Commission to forego the potential benefits of CPP.[18] It is difficult to credit

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[15] *See* AirTouch Comments at 8. *But see* Texas Office of Public Utility Counsel, Consumer Federation of America, Consumers Union (Joint Parties) Comments at 5, 12.

[16] CTIA Comments at 5.

[17] *Id*. at 5-6.

[18] *See, e.g.*, BellSouth Corporation (BellSouth) Comments at 10, 13-14; Florida Public Service Commission (Florida PSC) Comments at 2; Joint Parties Comments at 2.

such an argument, since it seems to rest on the misplaced notion that it would be sound and acceptable public policy for the Commission to relax its efforts to enhance competition and consumer welfare.

Pilgrim believes that a better public policy requires just the opposite — any new services that hold the potential to benefit consumers and competition deserve to be tested because it is through such a process of technological and service innovation, and verdicts in the marketplace, that the benefits of competition can be sustained and expanded. The Commission in fact has a statutory responsibility to take actions that are necessary or appropriate to encourage new services that have the potential to promote competition and consumer benefits.[19] Opponents of CPP have not proven their case that the Commission should ignore the opportunity to realize the potential of CPP.

Some commenters also have argued that the Commission should not rely upon the performance of CPP in Europe, Latin America, and elsewhere as a basis for concluding that CPP would produce similar beneficial effects in the American telecommunications marketplace.[20]As is often the case in attempting such comparisons and in trying to make predictive judgments regarding marketplace operations and effects, there is room for debate and reasonable disagreement regarding the relevance of the performance of CPP in foreign markets. In Pilgrim's view, the case studies presented by PCIA make a convincing showing to support PCIA's conclusion that CPP has been implemented successfully throughout Europe and Latin America and elsewhere around

[19] *See, e.g.*, Section 7(a) of the Act, 47 U.S.C. § 157(a) ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public.").

[20] *See, e.g.*, Joint Parties Comments at 17; US West Communications (US West) Comments at 9.

the globe, and that CPP can stimulate demand, result in more balanced traffic flows, and make mobile phone service more competitive with landline services.[21]

Even if the Commission were to conclude, however, that differences between foreign and domestic telecommunications markets make comparisons difficult, it would seem that there is at least some probative value to the fact that CPP has performed well in other countries. In any event, Pilgrim believes that, regardless of whether the Commission chooses to draw any inferences from the performance of CPP in foreign markets, there is a sufficient independent basis in the record for the Commission to conclude that regulatory action is warranted to ensure that CPP is fairly tested in the domestic marketplace.

IV. CALLING PARTY PAYS WILL NOT WORK UNLESS THE COMMISSION REQUIRES LOCAL EXCHANGE CARRIERS TO PROVIDE BILLING AND COLLECTION SERVICES

Pilgrim believes, and is joined by many other commenters in arguing, that the Commission will be sentencing CPP to failure in the marketplace if the Commission refuses to require LECs to provide billing and collection for CPP. There are substantial arguments supporting this conclusion, and these arguments stand in telling contrast to the failure by CPP opponents to contend with, or even acknowledge, some of the most problematic difficulties that would face CMRS carriers if they sought to provide CPP without having access to LEC billing and collection services.

We first discuss the basis for the Commission's regulatory authority to exercise its ancillary jurisdiction to require LECs to make billing and collection available for CPP, and we demonstrate that opponents of this approach have failed to mount any serious challenge to the Commission's authority.

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[21] *See* PCIA Comments at 12, 15-22.

Next, we examine how the record has now provided compelling support for the exercise of the Commission's ancillary jurisdiction. Commenters have presented substantial evidence and arguments that the LECs, largely by dint of their local exchange monopolies, are well positioned to make effective billing and collection services available to CPP providers; that there is no basis for concluding that CMRS carriers could rely upon alternative billing and collection mechanisms for their CPP offerings; and that a Commission requirement that LECs provide billing and collection would not lead to any unwarranted costs or burdens that would make such a requirement inadvisable or contrary to the public interest.

Finally, we explain our support for those comments that suggest that Section 251 of the Act[22] provides an alternative source of Commission authority for facilitating a fair market test for CPP. There are strong reasons buttressing a Commission conclusion that ILECs should be required to provide billing and collection services to CPP providers as unbundled network elements (UNEs) pursuant to the requirements of Section 251.

A. The Commission Should Exercise Its Ancillary Jurisdiction To Require Local Exchange Carriers To Provide Billing and Collection

Although some parties have ineffectually endeavored to suggest that the Commission does not have a legal basis for exercising its ancillary jurisdiction to require LEC billing and collection, there can be little doubt, based upon judicial precedent, the Commission's own decisions, and the record of this proceeding, that a statutory framework is in place that will enable the Commission to establish such a billing and collection requirement. Moreover, the record demonstrates that the facts surrounding the CPP case present compelling public policy reasons for the Commission to utilize its statutory authority to require LEC billing and collection.

1. The Commission Has Sufficient Statutory Authority To Exercise Its Ancillary Jurisdiction in this Case

Pilgrim demonstrated in our comments in this proceeding[23] that the Commission established a blueprint in the *Billing and Collection Order*[24] for the criteria under which the Commission would find it necessary to utilize its ancillary jurisdiction to require LECs to provide billing and collection services, that those criteria are met by the case presented by CPP, that the CPP case can be distinguished from earlier Commission decisions that refused to exercise the agency's ancillary jurisdiction to require LEC billing and collection, and that the decision here to provide access to LEC billing and collection for CPP providers can be effected in a manner that would not require the *Billing and Collection Order* to be overturned.

As Pilgrim observed in our comments,[25] the Supreme Court has determined that the Commission may exercise its ancillary jurisdiction under the Communications Act to the extent that doing so "is imperative if [the Commission] is to perform with appropriate effectiveness certain of its other responsibilities."[26] The Commission has found that "[t]he exercise of ancillary jurisdiction requires a record finding that such regulation would 'be directed at protecting or pro-

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[22] 47 U.S.C. § 251.

[23] *See* Pilgrim Comments at 14-33.

[24] Detariffing of Billing and Collection Services, CC Docket No. 85-88, Report and Order, 102 F.C.C.2d 1150 (1986) (*Billing and Collection Order*), *recon. denied*, 1 FCC Rcd 445 (1986).

[25] Pilgrim Comments at 14-15.

[26] United States v. Southwestern Cable, 392 U.S. 157, 173 (1968), *cited in* Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, FCC 99-181, released Sept. 29, 1999 (*Section 255 Order*), at para. 95 & n.220.

moting a statutory purpose.'"[27] Parties addressing the ancillary jurisdiction issue have lent considerable support to the arguments presented by Pilgrim in our response to the *CPP Rulemaking Notice* regarding the Commission's authority to invoke ancillary jurisdiction and the policy reasons for doing so in this case.[28] In addition, AirTouch, in recommending that the Commission should adopt a simple, enforceable rule that prohibits ILECs from refusing to offer billing and collection services for CPP on just, reasonable, and non-discriminatory terms, demonstrates that the Commission could issue such a rule without reversing the *Billing and Collection Order* or altering its view that billing and collection does not constitute a common carrier service.[29]

In evaluating whether it should invoke its ancillary jurisdiction in this rulemaking, the Commission must answer two central questions. First, does the ability of CMRS carriers to offer CPP in the marketplace have the potential to protect or promote any statutory purposes? Second,

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[27] *Billing and Collection Order*, 102 F.C.C.2d at 1170 (para. 37) (quoting Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Docket No. 20808, Final Decision, 77 F.C.C.2d 384, 433 (para. 126) (1979)).

[28] *See* AirTouch Comments at 27-29; America One Comments at 9; Billing Coalition Comments at 12; Nevadacom Inc. (Nevadacom) Comments at 4 (Commission should invoke ancillary jurisdiction to prevent LECs from unreasonably terminating or modifying billing and collection agreements with clearinghouses); VoiceStream Comments at 8. *See also* PCIA Comments at 48-50 (requiring the LECs to provide billing and collection for CPP would not be inconsistent with the *Billing and Collection Order*).

[29] See AirTouch Comments at 10-11, 21-25. AirTouch argues that the Commission should take an approach similar to an action it took regarding the provision of billing and collection services by cable system operators. *Id*. at 10 (citing Implementation of Sections of the Cable Television and Consumer Protection Act, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5943-45 (paras. 14-15) (1993)). In that proceeding, the Commission required cable operators (who are not classified as common carriers) to provide billing and collection to leased access programmers unless the operators could demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offered leased access programmers an alternative substantially equivalent to that offered by the cable operators for comparable non-leased programming.

in order for CMRS carriers to have such an opportunity, is it necessary for the Commission to establish any rules or requirements pursuant to its ancillary jurisdiction?

In our earlier discussion,[30] and in our comments responding to the *CPP Rulemaking Notice*,[31] we have demonstrated that CPP has the potential to advance a number of statutory purposes. We believe that other parties have joined to provide a strong record supporting the conclusion that Commission rules facilitating the offering of CPP can be firmly grounded in the advancement of statutory objectives.[32] In the following sections we will return in greater detail to the second question; Pilgrim believes that it has been evident from the outset that CPP cannot enter the marketplace as a viable service offering unless CMRS carriers have the option of utilizing LEC billing and collection services to offer CPP. The Commission now has the benefit of a record that is abundant with facts and arguments proving this case. Equally compelling is the fact that there is absent from the record any credible attempt to CPP opponents to counter these facts and arguments.

Before turning to our discussion of the policy reasons compelling a LEC billing and collection requirement, however, we would first like to underline the fact that the opponents of such a requirement have completely failed to come forward with any arguments that would adequately support a conclusion that the Commission lacks authority to invoke its ancillary jurisdiction as a means of securing a fair and effective marketplace test for CPP services.

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[30] See Section III, *supra*.

[31] *See* Pilgrim Comments at 16-22 (illustrating that CPP has the potential of promoting and protecting statutory objectives by increasing local exchange competition, enhancing wireless marketplace competition, and promoting spectrum efficiency).

[32] *See, e.g.*, note 7, *supra*, and accompanying text.

BellSouth, for example, seeks to convince the Commission that Section 332 of the Act[33] erects a bar to the Commission's exercise of ancillary jurisdiction because billing and collection is a term or condition of CMRS which may be regulated by the States pursuant to Section 332(c)(3).[34] BellSouth's argument apparently is that Section 332 gives the States authority to regulate the manner in which a *CMRS carrier* bills and collects for CPP (because billing and collection is a term or condition of CPP), and, therefore, a Commission requirement that *local exchange carriers* make billing and collection available for CPP would intrude upon the States' prerogatives to regulate CPP billing and collection.

BellSouth does not make a convincing case for its reading of Section 332. As CTIA has observed (in its analysis of the Commission's authority to impose uniform national notification standards), "before the Commission may determine that states possess authority over particular terms and conditions of CPP service pursuant to Section 332(c)(3)(A), it must first determine whether the terms at issue are rate- and entry-related."[35] Thus, if a "term or condition" such as billing and collection is considered to be rate- or entry-related, then it becomes a term or condition that is beyond the scope of State regulatory authority reserved in Section 332.

In this regard, Pilgrim agrees with AT&T that CPP should be classified as a CMRS rate "because CPP plans change the structure and incidence of charges for wireless calls."[36] Such a classification would in turn treat billing and collection as a rate-related term or condition, which

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[33] 47 U.S.C. § 332.

[34] BellSouth Comments at 6.

[35] CTIA Comments at 12.

[36] AT&T Comments at 3 (citing AT&T v. Central Office Telephone, 118 S.Ct. 1956, 1963 (1998)).

would not be subject to State regulation under Section 332. Moreover, we believe that billing and collection is also an entry-related term or condition because a failure to provide LEC billing and collection would adversely affect the introduction of CPP and would thus constitute a barrier to entry.[37] Under the analysis suggested by CTIA, treating billing and collection as an entry-related term or condition also takes it outside the reach of State jurisdiction under Section 332.[38]

Finally, even if it were to be conceded *arguendo* that BellSouth is correct in asserting that a Commission requirement that LECs must provide billing and collection for CPP is somehow proscribed by Section 332 because it would conflict with authority reserved to the States under that section, then, for the reasons Pilgrim explained in our comments, the Commission would still have a basis for preempting this State authority.[39]

BellSouth also attempts to argue that an exercise of ancillary jurisdiction in this case would be against Commission precedent because the competitive pressures that led the Commis-

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[37] *See* AirTouch Comments at 26; PCIA Comments at 52.

[38] We reiterate the position taken in our comments that we do not believe that Section 332 serves as a basis for Commission authority to impose LEC billing and collection requirements. Pilgrim Comments at 37-38. Our point here is that, contrary to the claims of BellSouth, Section 332 does not have the effect of *prohibiting* such a Commission requirement.

[39] *See* Pilgrim Comments at 36-37 (citing Public Serv. Comm'n of Maryland v. Federal Comm. Comm'n, 909 F.2d 1510, 1515 (D.C.Cir. 1990)). *See also* CTIA Comments at 16-20 (illustrating that "impossibility" precedent under Section 2(b) of the Act, 47 U.S.C. § 152(b), would be a basis for preempting any inconsistent or additional State requirements relating to CPP customer notification). Pilgrim also agrees with the analysis presented by AirTouch that the Commission could adopt a rule requiring LEC billing and collection without interfering with State authority over intrastate local exchange services or the "other terms and conditions" of CMRS. AirTouch Comments at 29. AirTouch suggests that "the Commission's authority over CMRS entry provides sufficient grounds to address LEC billing for intrastate CMRS services." *Id*. Although the States may have concurrent authority to regulate LEC billing and collection, AirTouch argues that the Commission "unquestionably does" have authority to reach LEC billing and collection for intrastate services. *Id*.

sion to detariff billing and collection in the *Billing and Collection Order* also exist in the case of CPP.[40] But, in presenting examples of billing and collection services that purportedly would provide CPP carriers with effective alternatives to LEC billing and collection,[41] BellSouth inexplicably ignores two central issues, namely, that it would be prohibitively expensive for CPP providers to generate separate bills for casual CPP calling parties, and that many of these bills would not be collected.[42] In Pilgrim's view, BellSouth's failure to even acknowledge these two critical aspects of the billing and collection issue speaks for itself.

Other CPP opponents apply an even lighter brush than BellSouth in attempting to persuade the Commission that there is no basis for invoking ancillary jurisdiction. Bell Atlantic, for example, recites the refrain that, since the adoption of the *Billing and Collection Order* thirteen years ago, the Commission has continued to find that LEC billing and collection services are not essential and that there are competitive alternatives for billing and collection in the marketplace.[43]

Bell Atlantic would have the Commission believe that the findings made by the Commission regarding the viability of these alternatives apply with equal force to billing for CPP, ignoring completely the arguments presented in this record that CMRS carriers cannot effectively do their own billing for CPP, nor can they rely on credit card companies, clearinghouses, cable companies, electric utilities, or other third party billing alternatives. If Bell Atlantic chooses to ignore these arguments it cannot expect the Commission to give any weight to Bell Atlantic's cursory efforts

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[40] BellSouth Comments at 17.

[41] *See id.* at 15-17.

[42] We discuss these issues in Section IV.A.2.b, *infra*.

[43] Bell Atlantic Comments at 6.

to "apply" the *Billing and Collection Order* precedent. Finally, Bell Atlantic continues in this vein by asserting that, "because the Commission has ruled that billing and collection are not common carrier services, [the Commission] would lack the authority" to require LEC billing and collection for CPP.[44] This assertion flies in the face of the Commission finding in the *Billing and Collection Order* that it has authority to regulate LEC billing and collection through an exercise of its ancillary jurisdiction,[45] notwithstanding the Commission's view that billing and collection is not a common carrier service.[46]

US West joins BellSouth and Bell Atlantic in seeking to assure the Commission that there is no need to require LEC billing and collection for CPP. "The suggestion that LEC billing and collection services are necessary for CPP to be successful are [*sic*] incorrect. While such services might be nice, they are not critical."[47] Pointing to the fact that billing aggregators and clearinghouses "have now come into their own,"[48] US West opines that CMRS carriers have "a multitude of alternatives" available for CPP billing and collection: they can do it themselves; they can "approach LECs" for "negotiated" billing and collection services, they can work with aggregators, or they can contract with credit card vendors. US West concludes optimistically that these alternatives are "obviously present and available."[49]

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[44] *Id*. at 7.

[45] *Billing and Collection Order*, 102 F.C.C.2d at 1169 (para. 36).

[46] *Id*. at 1167-69 (paras. 30-34).

[47] US West Comments at 19.

[48] *Id*. at 20.

[49] *Id*. at 21.

What is also obvious, in Pilgrim's estimation, is that these alternatives will not work. More to the point for our present purposes, however, is the fact that US West elects not to engage in any examination whatever of the claims in the record that LEC billing and collection is necessary because other means of trying to accomplish billing and collection for CPP will not be effective. This failure by US West is all the more puzzling in light of the fact that the Commission specifically sought comment on the issue.[50] In Pilgrim's view, the decision by US West to refrain from addressing these central issues surrounding whether there is a need for LEC billing and collection makes it difficult for the Commission to embrace US West's view that such billing and collection would be nice but is not critical.

[50] *CPP Rulemaking Notice* at para. 61 ("[W]e ask whether the offering of CPP would be cost-prohibitive in the absence of incumbent LEC billing and collection services."). *See also id*. at para. 57 (parties argue that direct LEC billing and collection is necessary in order for CPP to be economically viable).

2. There Are Compelling Policy Reasons for the Commission To Require Local Exchange Carriers To Provide Billing and Collection

Although SBC opposes any Commission requirement that LECs must provide billing and collection services for CPP,[51] its comments are nonetheless on target in describing what is at stake with regard to billing and collection for CPP. SBC notes that leakage ("the inability to be compensated for all calls" [52]):

> presents the potential to increase rates for the calling party. The costs of fixing leakage and the inability to bill for *all* calls is likely to raise the rates charged to parties who call CMRS customers with CPP and who do not present a "leakage" problem. If that is the case, CPP calling would be suppressed, the prices increased and the service would become virtually unmarketable, both to calling parties and to wireless customers who previously desired and selected the CPP option.[53]

One does not need to agree with SBC's predictions regarding the effect of leakage on calling party rates in order to understand the soundness of SBC's central point: if CPP providers cannot bill and collect for all their calls, then they will not have a marketable service.

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[51] *See* SBC Comments at 8.

[52] *Id*. at 10. Although SBC gives specific examples of leakage that do not relate to the absence of LEC billing (such as the inability to bill and collect for CPP calls from payphones), SBC also seems to contemplate that its use of the term would embrace situations in which LECs refuse to bill and collect for CPP; thus, SBC indicates that "[t]he leakage problem caused by calls from CLECs [competitive local exchange carriers] and other wireless carriers raises the additional issue of whether all carriers would be forced to bill and collect for CPP. Many of the existing wireless billing systems are not designed to bill for other carriers and would need to be enhanced to do so at considerable expense." *Id*. at 10 n.17. Cases in which LECs do not bill and collect for CPP would seem to raise the same leakage problem as the one cited by SBC in its reference to competitive LECs and wireless carriers.

[53] *Id*. at 11 n.18 (emphasis in original).

The issue for the Commission becomes whether the nature and extent of the billing problems surrounding CPP offerings call for regulatory action. For the Commission to justify the exercise of its ancillary jurisdiction to solve these problems, by requiring that LECs provide billing and collection to CPP providers, the Commission must conclude (in addition to finding that CPP has the potential to advance statutory purposes) that the LECs can provide effective billing and collection services that will facilitate the offering of CPP, that CPP providers have no other viable alternatives for billing and collection, and that the imposition of a billing and collection obligation would not impose undue burdens or costs upon LECs. Pilgrim examines each of these issues in turn in the following sections, demonstrating that the record of this proceeding has further cleared the way for the Commission to invoke its ancillary jurisdiction to require LEC billing and collection.[54]

[54] *See Section 255 Order* at para. 106:

> We will not ignore a record that demonstrates that our failure to apply accessibility requirements to voicemail and interactive menus will substantially undermine implementation of these significant provisions. Where . . . the record demonstrates that implementation of the statute will be thwarted absent use of our ancillary jurisdiction, our assertion of jurisdiction is warranted. Our authority should be evaluated against the backdrop of an expressed congressional policy favoring accessibility for persons with disabilities. This backdrop serves to buttress the actions taken today, not limit it.

In the present case, CPP has the potential to advance several express statutory policies, and, thus, these policies would not be protected or promoted if CPP is not able to be tested in the marketplace. Moreover, the record amply demonstrates that, in the absence of an exercise of ancillary jurisdiction by the Commission to require LECs to provide billing and collection, CPP cannot receive a fair marketplace test.

a. Local Exchange Carriers Are Uniquely Situated To Furnish Billing and Collection for Calling Party Pays

If there were any basis for concluding that LECs are not capable of effectively providing billing and collection services to support CPP offerings, then it would be an unreasonable exercise of the Commission's authority to require LECs to make such services available. To the contrary, however, there is, as one might expect, abundant evidence demonstrating that LECs have unique and unparalleled resources enabling them to provide such services.

As Pilgrim observed in our comments,[55] there are examples in which LECs have been providing billing and collection services for CPP, suggesting that LECs have the capabilities in place to accept call data from CPP providers, combine this data with information maintained in LEC databases, calculate charges on the basis of these records, generate and mail bills to calling parties reflecting these charges, record payments received, provide appropriate customer care activities in conjunction with the furnishing of CPP bills, and provide collection services. Moreover, in responding to the *CPP Rulemaking Notice*, a number of LECs have indicated that they are engaged in providing billing and collection services to CPP providers,[56] or that they believe that it would be viable for CPP providers to negotiate with LECs to obtain billing and collection.[57] This further

[55] Pilgrim Comments at 30-31 & n.72.

[56] *See* Cincinnati Bell Comments at 2; US West Comments at 20.

[57] *See* Ameritech Comments at 5-6; Bell Atlantic Comments at 5 ("Bell Atlantic telephone companies are happy to bill CPP calls"); GTE Service Corporation (GTE) Comments at 33.

supports the conclusion that LECs possess the capabilities needed to provide this service to CMRS carriers.[58]

In addition, other parties commenting in the proceeding have observed that the existing wireline infrastructure has the capabilities to provide effective billing and collection services. For example, Nortel comments that "it is clear . . . that . . . the technology and most of the infrastructure . . . to facilitate cost efficient billing and collection services is . . . currently available [and that] most of these technologies and most of the referenced infrastructure presently reside in the wireline public switched telephone network . . . ."[59] This leads Nortel to conclude that "the most efficient and cost effective means of delivering a nationwide CPP system would require significant involvement of wireline carriers."[60]

AirTouch submitted a study with its comments[61] that demonstrated that "ILECs are particularly well-suited to provide CPP billing and collection services."[62] The Katz and Majerus Study, in supporting this conclusion, pointed out that ILECs have billing name and address (BNA) databases; they have bill-generating software in place that has the capability to calculate

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[58] One party has even suggested that LECs could help facilitate collection of CPP charges by blocking a customer's access to CPP services until outstanding debts are paid. Public Utilities Commission of Ohio (Ohio PUC) Comments at 13.

[59] Nortel Networks Inc. (Nortel) Comments at 4.

[60] *Id*.

[61] AirTouch Comments, Attachment A, "Declaration of Dr. Michael L. Katz and David W. Majerus: ILEC Market Power in Billing and Collection," Sept. 17, 1999 (Katz and Majerus Study).

[62] Katz and Majerus Study at 8. *See* Billing Coalition Comments at 3 (LECs are capable of providing billing and collection to third parties for intermittent services, as illustrated by their current provision of billing and collection for 10-10-XXX "dial around" services without any technical or economic difficulties).

applicable local taxes for telecommunications services; there are minimal incremental costs associated with CPP billing; and ILECs already have an infrastructure in place for collecting payments from end users.[63] Finally, PCIA observes that ILECs have unique advantages as providers of billing services, many of which are a direct result of the ILECs' status as monopoly providers of local exchange service. PCIA suggests that the economies of scale for ILEC billing and collection are significant, and that the incremental cost of including additional call billing information in bills already produced by the ILECs is *de minimis*.[64]

No one mounts a serious challenge to these observations in the record. Pilgrim believes that it is reasonable to stipulate that (as Nortel has observed) wireline carriers have the infrastructure in place to facilitate CPP billing and collection. The question, then, is whether there are policy reasons for the Commission to require that this infrastructure be made available.

b. Wireless Carriers Cannot Rely upon Other Means To Bill and Collect For Calling Party Pays

The issue of whether CMRS providers are able to do their own billing and collection for CPP (or arrange for non-LEC billing and collection) is perhaps the most central question of this rulemaking. If CMRS providers can successfully bill and collect for CPP without relying on LEC services, then there may not be any need for the Commission to exercise its ancillary jurisdiction. This would be the case even if the Commission were to find (as it would be compelled to do based on the current record) that LECs have the capability to provide billing and collection for CPP, and that they can do so without any undue burdens or unrecouped costs. If there is a basis to conclude that CMRS carriers could effectively bill and collect for CPP without using LEC services, then the

[63] Katz and Majerus Study at 8-9.

[64] PCIA Comments at 39-40.

Commission could also conclude that CPP could gain a fair test in the marketplace, and that its potential to advance statutory goals might be realized, without the need for any Commission intervention with regard to billing and collection.

On the other hand, if there is no basis to support a conclusion that CMRS carriers can successfully bill and collect for CPP without using LEC services, then the Commission is left with two choices. The Commission could conclude that, as matters have turned out, it does not even need to reach this issue because CPP does not hold any potential to advance statutory goals, thus making regulatory action inadvisable. As we have discussed in our comments and in the earlier sections of these reply comments, Pilgrim does not believe there is a reasonable basis for such a conclusion. The remaining choice for the Commission is to take action to ensure that LEC billing and collection is available for CPP. Thus, in Pilgrim's view, much is at stake in evaluating whether billing and collection can work for CPP with LECs absent from the picture.

This is not a close question.

As Pilgrim detailed in our comments,[65] substantial evidence and arguments were presented to the Commission in response to the *CPP Notice of Inquiry* explaining why it would be uneconomic for CMRS carriers to attempt to market CPP without access to LEC billing and collection. Submissions in response to the *CPP Rulemaking Notice* have not changed this picture, but have brought it into even sharper focus.

The record is rich with detailed information chronicling the difficulties that can be expected if CMRS providers attempt to bill and collect without any access to LEC services, and supporting the conclusion that there cannot be "a successful calling party pays system without the

[65] *See* Pilgrim Comments at 9-13, 25-27.

landline telephone companies doing the billing and collection for wireline to wireless calls."[66] AirTouch, for example, argues persuasively that CMRS providers simply will not offer CPP in the absence of LEC billing and collection because, without the LEC services, CMRS carriers would face uneconomic levels of billing expense, substantial levels of uncollected revenue, and increased consumer inconvenience and confusion.[67]

Many parties have demonstrated that it would be prohibitively expensive for CMRS providers to attempt their own billing and collection, and that non-LEC alternatives are not adequate to make CPP offerings economically viable.[68] In this regard, AirTouch explains that the econom-

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[66] Merrill Lynch, "The Next Generation III: Wireless in the U.S.," at 52-53 (Mar. 10, 1999), *quoted in* AirTouch Comments at 25. *See* Billing Coalition Comments at 2; PCIA Comments at 33-34; VoiceStream Comments at 5.

[67] AirTouch Comments at 12. *See* PCIA Comments at 34 ("No economically viable alternative to ILEC delivery of a bill to end users currently exists, nor can the Commission expect that CMRS providers or any third party will be able over the near or medium term to replicate the competitive advantage that ILECs enjoy in this area.").

[68] *See* AirTouch Comments at 16-17 (AirTouch has discussed billing and collection with utilities, has also fully explored introducing a CPP product that would require all calling parties to enter a credit card or calling card number, and has concluded that these approaches are not feasible); Katz and Majerus Study at 9-14 (discussing inadequacy of clearinghouses, interexchange carriers (IXCs), credit card companies, cable companies, and utilities as alternatives for CPP billing and collection); PCIA Comments at 33-34, 39-41; Sprint Comments at 7-8; USCC Comments at 10 n.5. Some parties have taken issue with this point of view, arguing that the purpose of any Commission-mandated LEC billing and collection presumably would be to protect the ability of CMRS providers to offer CPP cost effectively, but that such action would constitute Commission intervention in the marketplace to regulate the costs of providing a particular competitive service, and that, as competition develops, it is less and less appropriate for regulators to intervene to protect against the costs incurred by any one group of providers. *See, e.g.*, California Public Utilities Commission and the People of the State of California (California) Comments at 14. Pilgrim believes this line of argument understates the problem: the weight of the evidence in the record suggests not merely that it would be more costly for CMRS carriers to offer CPP in the absence of LEC billing, but rather that CPP simply cannot sustain itself in the marketplace without the availability of LEC billing and collection. Thus, the issue for the Commission here is not whether to intervene for purposes of improving the ratio between costs and earnings for CMRS carriers, but rather for purposes of enabling a marketplace test for a service that has the potential

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ics of separate billing for CPP would engulf any efficiencies that CMRS carriers might achieve with regard to the use of more efficient rating, recording, and billing equipment made available through new technologies.[69] The reason for this, AirTouch demonstrates, is that the cost of rendering separate bills is too high relative to the small amount of revenue that each bill represents,[70] and the level of uncollected revenue is too great.[71]

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to benefit competition and consumers. Another party makes the suggestion that CMRS carriers could minimize their billing and collection costs (and avoid the expense of purchasing LEC billing and collection services) by doing their own billing but issuing bills on a quarterly, rather than a monthly, basis. SBC Comments at 8 n.12. Quarterly billing to calling parties, however, would almost surely exacerbate an already severe uncollectibles problem. See note 71, *infra*.

[69] AirTouch Comments at 13-14.

[70] The Katz and Majerus Study illustrates that billing and collection is characterized by strong economies of scale at the individual bill level. There are fixed costs associated with each individual bill that are large relative to the incremental cost of placing an additional record on a bill. Katz and Majerus Study at 5-6. AirTouch expects that, in the future, over 80 percent of CPP bills will be for less than $5.00 per month. *Id*. at 5. AirTouch also estimates that it would incur costs of approximately $1.00 to generate a single bill for a customer. (The Katz and Majerus Study indicates that this includes the costs of obtaining BNA, printing a bill, and mailing it, but the estimate does not include changes in billing software and systems to perform CPP billing and collection, or collection and customer inquiry costs. AirTouch estimates that, if it processed 2.4 million CPP bills per year, these full costs would amount to roughly $9.00 per bill. *Id*. at 6 & n.4.) For comparative purposes, the Katz and Majerus Study points out that it generally costs merchants about $3.00 to print and mail a paper bill. *Id*. at 6. *See* Billing Coalition Comments at 4; VoiceStream Comments at 7. The Billing Coalition also points out that CMRS carriers' use of BNA is not a viable alternative to the LECs' provision of billing and collection services. The cost of direct billing, plus the cost of acquiring BNA from the LEC, would make billing and collection prohibitively expensive for the CMRS carrier. Billing Coalition Comments at 11. In addition, BNA has little practical value — it takes too long to obtain; it can be unreliable; and it often is outdated. *Id*.

[71] AirTouch Comments at 14-16. AirTouch points out, for example, that "[e]vidence before the Commission establishes that uncollectible accounts are, *at best*, nearly 50% when separate bills are used by third parties using LEC-provided BNA, in sharp contrast to a usual uncollectibles rate of 10% for charges billed on the LEC bill." *Id*. at 16 (emphasis in original) (footnote omitted). *See* America One Comments at 3, 8; USCC Comments at 8-9.

Parties opposing LEC billing and collection requirements have often cited clearinghouses as a non-LEC billing and collection alternative that will solve CPP billing and collection problems, but their attempt to pose this alternative serves as an instructive illustration of the general weaknesses in these parties' arguments regarding this issue. The simple fact of the matter is that clearinghouses have no capacity to carry out any billing and collection. The clearinghouses depend upon contracts with LECs for actual billing and collection.[72] The clearinghouses serve merely to aggregate billing information from multiple companies and funnel this information into the LECs' billing systems. If clearinghouses seek to expand the types of services for which they provide this service, their contractual arrangements with the LECs require that they obtain LEC approval before doing so. Given these facts, it should be plain to see that clearinghouses cannot solve the central billing and collection problems facing CPP providers because the operations of the clearinghouses are completely intertwined with, and dependent upon, the billing and collection operations of the LECs.

The issue of the workability of non-LEC alternatives is made even easier to resolve by the fact that CPP opponents offer virtually no rebuttal to the catalogue of problems that the record demonstrates would be caused by a failure to make LEC billing and collection available for CPP. We already have addressed the unconvincing arguments advanced by BellSouth, Bell Atlantic, and

[72] As we previously indicated (see note 28, *supra*), one party in this proceeding, in fact, has argued that the Commission should invoke its ancillary jurisdiction to prevent LECs from unreasonably terminating or modifying their billing and collection agreements with clearinghouses. "The current LEC practice of terminating [billing and collection] agreements or imposing unreasonable conditions on billing clearinghouses threatens the continued viability of many telecommunications carriers . . . ." Nevadacom Comments at 4. *See* Sprint Comments at 8.

US West in their attempts to convince the Commission that LEC billing and collection should not be made available for CPP offerings.[73] Other parties hoping for this result do not fare any better.

Cincinnati Bell, for example, contends that there is "clear evidence that there are several options available to CMRS providers seeking to bill CPP charges. . . . [T]he CMRS provider could bill its own CPP charges, contract with a non-communications company to provide billing and collection, or could contract with a billing and collection clearinghouse."[74] A mere listing of these alternatives, however, does not bring with it any demonstration that they would contribute in any way toward making CPP a marketable service. Cincinnati Bell fails to explain *how* these options in fact could be effectively utilized by CPP providers, or *why* the Commission should conclude that the evidence and arguments proving the contrary should be disregarded. GTE mirrors Cincinnati Bell, citing "credit card companies, third-party billing and collection vendors, and billing and collection by the CMRS provider itself" as suitable alternatives for LEC billing and collection, but also fails to address evidence and arguments in the record that these alternatives are unworkable in the context of CPP.[75]

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[73] See pages 16-19, *supra*.

[74] Cincinnati Bell Comments at 5-6.

[75] GTE Comments at 33. *See* NTCA Comments at 7 (claiming that there are alternatives to LEC billing and collection, but ignoring evidence and arguments in the record regarding the various shortcomings of these alternatives); USTA Comments at 6-7 (contending that "an entire billing and collection industry has emerged as an alternative to ILEC billing and collection" and that mandatory ILEC billing and collection would be "regulatory overkill" but failing to counter arguments that these billing and collection alternatives are inadequate substitutes for LEC services); Washington Utilities and Transportation Commission (Washington UTC) Comments at 4 (arguing that there are readily available alternatives to billing through LECs but omitting any analysis of evidence and claims in the record that these alternatives would not provide adequate billing and collection for CPP).

GTE also argues that the "Commission may not regulate LEC provision of billing and collection . . . unless exercise of the agency's ancillary jurisdiction is necessary[,]" and then maintains that it is not necessary in this case because there is no evidence that the market for billing and collection services in the CPP context is any less competitive than the billing and collection market in other contexts.[76] GTE, however, does not support this claim. Given the demonstrable problems associated with non-LEC billing and collection for CPP, a more convincing view is that the ILECs possess substantial market power in the provision of CPP billing and collection because of the lack of suitable substitutes for the ILEC services.[77]

GTE also contends, echoing a point of view expressed by SBC in an earlier comment round in this proceeding,[78] that the Commission should rely on the fact that "LECs . . . have a

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[76] GTE Comments at 33.

[77] Katz and Majerus Study at 9-10, 19-20.

[78] *See* Pilgrim Comments at 32-33 (referencing SBC arguments that the provision of billing and collection must be the product of negotiation between LECs and CPP providers, that LECs would weigh the potential burdens of providing billing and collection in the context of these negotiations and would make their business judgments accordingly, and that these are not issues that lend themselves to broad-based Federal regulation). SBC returns to this theme in its latest filing, making the following argument:

> If competitive market forces are relied upon to produce efficient CMRS carrier marketing, pricing, investment, and research and development decisions, competition and consumer demand will also efficiently guide carriers' assessments of likely success or failure of potential new service offerings. Regulatory intervention regarding the billing and collection aspects of CPP could distort what would otherwise be an efficient result of the competitive process.

SBC Comments, Attachment, Douglas Mudd, "Calling Party Pays: Let the Market Decide," Sept. 1999, at 36 (italicized in original). Pilgrim believes, however, that the competitive process cannot render an "efficient result" in the case of CPP unless CPP is able to be fairly tested in the marketplace. As the record amply demonstrates, the availability of LEC billing and collection is the only means by which such a test can be secured. Moreover, as the record also documents, the

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strong incentive to negotiate billing and collection agreements because they are likely to need similar arrangements in order for their CMRS affiliates to offer CPP in other LECs' territories."[79] Perhaps GTE sees this as an example of the marketplace working in harmony with the statutory objectives which the Commission is charged with promoting and protecting, thus relegating the Commission to a subsidiary role. It would seem perilous, however, for the Commission to be satisfied that the realization of these statutory objectives can be dependent upon the course of LEC business plans. To cite one pitfall of GTE's argument, it is Pilgrim's understanding that SBC does not plan to offer CPP through its affiliates and will also persist in its refusal to make billing and collection services available to CPP providers in SBC territories. SBC business policies would thus wall off nearly one-third of the Nation's access lines[80] from LEC billing and collection for CPP.

In sum, a pivotal question for the Commission in deciding whether to require the availability of LEC billing and collection for CPP is whether there are suitable alternatives to these

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Commission should not hesitate in taking the action necessary to ensure that CPP receives this marketplace test because CPP has the potential of promoting a variety of statutory objectives.

[79] GTE Comments at 34. Qwest also argues that it is possible that ILECs might be willing to provide billing and collection services for CPP, and that CPP providers should be free to employ these ILEC services. Qwest Communications Corporation (Qwest) Comments at 8. But Qwest fails to acknowledge or address the evidence and arguments in the record regarding the problems CMRS carriers face in marketing CPP if ILECs are not willing to make their billing and collection services available to CPP providers. *See also* Ameritech Comments at 5-6 (suggesting that CMRS carriers can negotiate with wireline carriers for billing and collection, but failing to comment on the problems that would confront CMRS providers if LECs refused to negotiate); Illuminet, Inc. (Illuminet) Comments at 7 (arguing that market forces will cause LECs to facilitate workable billing and collection services, but conceding that some LECs may choose not to offer CPP billing and collection due to strategic or other business reasons).

[80] *See FCC Delivers Merger Documents to Congress, Asks Delay on Queries*, WASH. TELECOM NEWSWIRE, Sept. 2, 1999, 1999 WL 7297407 (merged SBC-Ameritech will control "almost one-third of U.S. local access lines").

LEC services. The Commission now has before it a record that documents a convincing array of reasons why non-LEC billing and collection options will not be sufficient for the marketability of CPP. All of the key points of this documentation have gone unanswered by those parties opposing the availability of LEC billing and collection.

c. A Billing and Collection Requirement Would Not Impose Significant Costs or Burdens Upon Local Exchange Carriers

Pilgrim believes that CPP has the potential to enhance local exchange competition and advance other statutory objectives, that this potential cannot be realized in the absence of effective means to bill and collect for CPP, that LECs are uniquely situated to provide billing and collection services, and that CMRS carriers are significantly handicapped by the fact that the inadequacy of other billing and collection alternatives severely undercuts the marketability of CPP.

We also acknowledge that prudent public policy requires that the potential benefits of CPP, and the need for LEC billing and collection to realize those benefits, must be balanced against the costs and burdens that may be imposed upon LECs if they are required to furnish billing and collection for CPP. If the costs and burdens of imposing a Commission requirement are likely to be significant, and there is some risk that these costs and burdens may go uncompensated, then the Commission faces a difficult task in justifying any decision to go forward.

Billing and collection for CPP, in Pilgrim's view, does not pose such risks. The record has provided strong evidence and arguments that LECs would not face substantial costs or burdens in providing billing and collection services for CPP. Nor is there any basis in the record to conclude that LECs would be handcuffed in their efforts to recoup their costs in providing these services. Finally, and most significantly, LECs and their supporters claim that costs and burdens would be excessive, but they fail to put into the record any information or evidence that might lend support

for their claim. In fact, Pilgrim believes that the evidence is so strong in the other direction that we endorse the suggestions of several commenters that the Commission should consider taking measures to ensure that LECs do not charge excessive rates for CPP billing and collection.

An analysis of this issue should begin with the observation that it is logical to make the threshold assumption that LEC billing and collection for CPP should not be prohibitively burden-some or costly. LECs already have an extensive billing and collection infrastructure in place,[81] and this infrastructure includes the capacity to generate monthly bills for millions of local exchange customers. LECs have engaged in billing and collection for casual calling services (including CPP)[82] and have been able to do so in a manner that has included sufficient cost recovery.

The Katz and Majerus Study has presented evidence supporting the view that LECs would not incur significant costs in providing billing and collection services for CPP. The key to this finding is the fact that "billing and collection is characterized by strong economies of scale at the individual bill level . . . because there are fixed costs associated with each individual bill that are large relative to the incremental cost of placing an additional record on a bill."[83] Thus, while it would be prohibitively expensive for CMRS carriers to incur the fixed costs associated with their

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[81] See note 59, *supra*, and accompanying text.

[82] *See* AirTouch Comments at 19.

[83] Katz and Majerus Study at 5-6. NTCA contends that LEC economies of scale are not relevant because the presence of scale economies "is true of many other billing agents." NTCA Comments at 5. Pilgrim believes, however, that, for the reasons we have discussed, these other billing agents are not in a position to provide effective billing and collection services for CPP. In any event, NTCA is mistaken if it intends to suggest that LEC scale economies are not relevant to an evaluation of the costs that would confront LECs if they were required to provide billing and collection for CPP. There is a direct relationship between the extent of scale economies and the level of such costs.

generating bills for non-subscribing calling parties,[84] "the incremental billing costs of adding charges to a bill already being sent out are relatively low."[85] The Katz and Majerus Study illustrates this point by indicating that the contract rate at which Ameritech provides CPP billing and collection services to AirTouch is 6 cents per CPP-billed call,[86] and by noting that ILECs charge approximately 12 to 13 cents per invoiced call for casual calling billing and collection.[87]

Thus, there is evidence in the record supporting the common sense view that LECs would not face steep fixed costs in billing and collecting for CPP because they already have the necessary infrastructure in place, and that the incremental costs associated with adding CPP charges to LEC monthly bills would be small. In these circumstances, LECs and their supporters should be under some obligation to back up their contrary assertions about burdens and costs. The record of comments in response to the *CPP Rulemaking Notice* reveals, however, that parties opposing a LEC billing and collection requirement have made little effort to provide evidence that would support their claims regarding the costs and burdens such a requirement would cause.[88]

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[84] See the discussion at pages 26-27, *supra*.

[85] Katz and Majerus Study at 7. *See* VoiceStream Comments at 6-7. PCIA notes that, although it could not secure the actual incremental cost for adding a line of bill detail because ILECs treat this information as proprietary, a study performed for PCIA by DETECON, Inc., and included in the record of this proceeding, estimates the cost to be less than 1 cent. PCIA Comments at 40. Also see the discussion in the text accompanying note 64, *supra*.

[86] Katz and Majerus Study at 7.

[87] *Id*. (citing MCI, Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, filed May 19, 1997, at 5).

[88] We note that SBC, in its earlier comments responding to the *CPP Notice of Inquiry*, contended that it would be expensive for LECs to provide billing and collection services, citing, for example, the fact that LECs would need to notify customers that the LECs were billing and collecting for CPP, and LECs would need to train their personnel to answer customer questions about CPP charges. SBC Comments to NOI at 16-17. Pilgrim observed in our comments that SBC had not

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BellSouth claims, for example, that mandated billing and collection could impose significant costs upon LECs, even though, according to BellSouth, it is not currently possible to fully quantify all the potential costs of implementing CPP.[89] BellSouth argues that CPP billing and collection "will require LECs to upgrade software and hardware" and that "the cost of modifying these systems is enormous."[90] In support of this assertion, BellSouth makes reference to its comments in another Commission proceeding, and states that the redesign or insertion of a single bill page can cost as much as $500,000 to $1 million.[91] BellSouth presents no information or explanation, however, regarding how this estimate was developed.[92] In the absence of such data (which, presumably, BellSouth should be in a position to produce), the Commission has no basis to assign any probative value to BellSouth's claims.

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documented or elaborated the level of these costs. Pilgrim Comments at 31-32. SBC has returned to this issue only obliquely in its comments responding to the *CPP Rulemaking Notice*. *See* SBC Comments at 10. Also see note 97, *infra*, and accompanying text.

[89] BellSouth Comments at 19. Many of the currently unquantifiable potential costs cited by BellSouth, *e.g.*, consumer education, customer notification and protection, the impact of a billing and collection requirement upon other regulatory initiatives, may not bear directly upon billing and collection and may not be costs that are imposed in whole or in part on LECs.

[90] *Id*. at 20.

[91] BellSouth Comments at 20 (citing BellSouth Comments, In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, filed Nov. 13, 1998, at 15). The BellSouth pleading in the Truth-in-Billing proceeding also points out that, in addition to programming costs, "each additional page of information would cost approximately $0.07 per subscriber per month." BellSouth Comments, In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, filed Nov. 13, 1998, at 15. This seems roughly comparable to the per call rate cited in the Katz and Majerus Study. See text accompanying note 86, *supra*.

[92] That is also the case with respect BellSouth's pleading in the Truth-in-Billing proceeding, which it cites in its comments filed in this proceeding. On its face, the substantial range of the estimated costs suggests a certain imprecision in the derivation of the estimates.

BellSouth also suggests that it might not be able to recover its programming costs from CMRS carriers if it is required to provide CPP "billing and collection upon demand . . . ."[93] BellSouth depicts a scenario under which it is required by Commission regulation to undertake programming investments, but it receives no billing requests from CMRS providers, forcing it "to recover the cost of preparing for the unwanted billing service from its wireline ratepayers . . . ."[94]

Pilgrim believes that BellSouth's fears are unfounded. The level of interest in CPP reflected in this proceeding strongly suggests that CMRS carriers would be keenly interested in making use of BellSouth's billing and collection resources. Moreover, it would be within the scope of the Commission's authority to structure a billing and collection requirement under which initial investment costs or obligations would not be triggered in the absence of any indication that CMRS carriers would subscribe to the LEC service.[95] For example, the Commission, in establishing requirements applicable to CMRS carriers for the implementation of enhanced wireless 911 features and functions, specified that the carriers would not be required to incur implementation costs unless Public Safety Answering Points had made requests to the carriers for the provision of the enhanced features and functions.[96] The Commission could examine similar mechanisms here,

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[93] BellSouth Comments at 20.

[94] *Id*.

[95] Bell Atlantic seems to have taken this matter into its own hands; PCIA notes that the carrier is requesting a "set-up fee" exceeding $500,000 to provide CPP billing in New York. PCIA Comments at 43 n.111.

[96] *See* Section 20.18(f) of the Commission's Rules, 47 C.F.R. § 20.18(f). (This subsection was recently redesignated as Section 20.18(i) by the Commission, but the text of the provision was not modified. The redesignation has not yet taken effect. *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Third Report and Order, FCC 99-245, released Oct. 6, 1999, at para. 95 & App. B.)

to ensure that LEC billing and collection services are available to CPP providers at compensatory rates while at the same time protecting LECs from the risks of unrecovered investment.

SBC is the only other LEC responding to the *CPP Rulemaking Notice* that attempts to address costs or burdens associated with LEC billing and collection. SBC maintains that "LECs should not be held responsible for handling what could be a host of consumer complaints concerning the new [CPP] service arrangement, and should not risk a potential reduction in the sale of their core services because of CPP 'sticker shock.'"[97] SBC does not quantify the level of costs it might face as a result of customer complaints, project what volume the host of complaints might reach, or suggest that any of its costs associated with these complaints would go unrecovered. Moreover, SBC's concerns overlook the likelihood that the Commission's calling party notification requirements, coupled with consumer education initiatives, will minimize the incidence of consumer complaints.

Pilgrim believes that nothing in the record lends any credible weight to the claim that the Commission should refrain from adopting LEC billing and collection requirements because they might impose burdens or unrecoverable costs upon LECs. No opponent of such requirements has come forward with any evidence or arguments to support its admonition that Commission action would have such a result. On the other hand, several parties have submitted information and arguments that lend support to the common sense view that LECs have the infrastructure in place to provide CPP billing and collection at minimal cost, and that LECs should face no impediments in recovering these costs.

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[97] SBC Comments at 10. SBC first presented its "sticker shock" concerns in an earlier comment round, *see* SBC Comments to NOI at 17, and adds nothing to the argument here. Pilgrim has already addressed the deficiencies of SBC's speculative assertions. *See* Pilgrim Comments at 32.

Pilgrim believes, in fact, that the LECs' control over this infrastructure should raise concerns regarding the LECs' ability to price CPP billing and collection services at excessive levels. The Katz and Majerus Study concludes that ILECs have sufficient market power with respect to CPP billing and collection to extract supra-competitive profits from their billing and collection services.[98] ILECs can "be expected to elevate [their] charges for these services above costs to the extent that regulators and the elasticity of demand [allow them] to do so profitably."[99] Pilgrim agrees with those parties who contend that CPP will never become a viable service offering without access to reasonably-priced ILEC billing and collection,[100] and we also agree with the Billing Coalition's observation that there is unequal bargaining power between the LECs (who control the local exchange bill) and CPP providers (who need access to the bill).[101]

The import of this pricing issue is that, if ILECs have the power to overprice CPP billing and collection services as well as the business motives to do so,[102] then prices for these services would be set at levels that would negate the public policy objectives of requiring ILEC billing and collection in the first place. If ILECs are required by Commission rules to provide CPP billing and collection, but have unfettered discretion to set rate levels without reference to their costs or any other reasonable pricing measure, then ILECs can comply with the Commission rules and price CPP out of the marketplace at the same time.

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[98] Katz and Majerus Study at 19-20.

[99] *Id*. at 20.

[100] *See* PCIA Comments at 33-34; Sprint Comments at 10.

[101] *See* Billing Coalition Comments at 8.

[102] See Section IV.A.2.d, *infra*.

Pilgrim thus believes that, if the Commission follows the record and sound public policy by requiring ILEC billing and collection for CPP, then the Commission must also give serious consideration to taking some action to restrict the otherwise unbridled power of ILECs to set prices at supra-competitive levels. Commenters have suggested two means by which the Commission could accomplish this result.

PCIA recommends that the Commission should prescribe "backstop" rules requiring ILECs to provide CCP billing and collection at incremental, cost-based rates, if private negotiations between CMRS carriers and ILECs fail.[103] Pilgrim supports consideration of such an approach, which presumably could be based upon the Total Element Long Run Incremental Cost (TELRIC) costing methodology developed by the Commission in connection with its implementation of the 1996 Act.[104]

A second approach has been suggested by Sprint, under which the Commission would establish "presumptively reasonable" rates for CPP billing and collection.[105] Under this approach,

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[103] PCIA Comments at 34.

[104] *See generally Local Competition Order*, 11 FCC Rcd at 15812-929 (paras. 618-862). The Commission, in adopting this methodology, stated its belief that:

> our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents, which may be expected to reduce the regulatory burdens and economic impact of our decision for many parties, including both small entities seeking to enter the local exchange markets and small incumbent LECs.

Id. at 15846 (para. 679).

[105] Sprint Comments at 10. Sprint indicates that its suggestion is based on a recent Commission decision establishing a method for determining the reasonableness of rates charged by

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LECs would be entitled to receive "fair compensation" for work performed in connection with providing billing and collection, including a "reasonable profit."[106] Rates set by a LEC below a level specified by the Commission would be presumed to be reasonable, but the LEC also would have flexibility to assess higher charges by demonstrating that the higher rates are justified by the LEC's costs.

Sprint also recommends that the Commission should seek supplemental comments for purposes of establishing presumptively reasonable rates for CPP billing and collection.[107] The approach suggested by Sprint, like the recommendation by PCIA for incremental, cost-based rates, would provide a means for the Commission to ensure that the public policy objectives driving a requirement that LECs provide billing and collection for CPP are not subverted by unchecked LEC pricing practices.

d. Local Exchange Carriers Have Anti-Competitive Incentives To Refuse To Bill and Collect for Calling Party Pays

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telecommunications carriers for subscriber list information provided to requesting directory publishers. *See* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket No. 99-273, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, FCC 99-227, released Sept. 9, 1999 (*Subscriber List Order*), at paras. 71-107.

[106] Sprint Comments at 10. The *Subscriber List Order*, in determining presumptively reasonable rates, concluded that the rates "should allow LECs to recover their incremental costs of providing subscriber list information to directory publishers plus a reasonable allocation of common costs and overheads. Basing rates on costs should promote the development of a competitive directory publishing market, while fairly compensating carriers . . . ." *Subscriber List Order* at para. 92.

[107] Sprint Comments at 11.

The question of whether LECs have anti-competitive motives to withhold the provision of billing and collection services is an important issue for the Commission to examine in this proceeding.[108] If there is a basis to conclude that the LECs have an interest in blocking or hampering the entry of wireless carriers into local exchange markets in order to preserve the LECs' market share, then the Commission should evaluate LECs' assertions regarding the costs and burdens they would face in complying with a billing and collection requirement armed with the understanding that these assertions may in part be the product of an effort in the regulatory arena to stave off wireless carrier entry into LEC-dominated markets. Moreover, if the Commission reaches the view that such anti-competitive motives may be at work, then it should insist upon billing and collection pricing mechanisms that prevent the LECs from using their market power to impose excessive charges upon potential competitors.

The Katz and Majerus Study explains why it would be rational for ILECs to engage in anti-competitive conduct. Given the fact that an ILEC has market power with regard to the provision of CPP billing and collection, and given the fact that it has an incentive to maximize its profits, it is rational for an ILEC to attempt to raise its rivals' costs because "[d]oing so allows the ILEC to achieve, enhance, or maintain market power in the markets in which it competes with these disadvantaged rivals."[109] AT&T makes the same point, noting that ILECs may have an incentive to avoid offering billing and collection to CMRS carriers, "especially if the incumbent LEC in question has a wireless affiliate or wants to frustrate the development of wireless service

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[108] The Commission recognized this by seeking comment on issues relating to possible anti-competitive conduct by LECs in connection with CPP billing and collection services. *See CPP Rulemaking Notice* at para. 61.

[109] Katz and Majerus Study at 20.

as a substitute for landline offerings."[110] The Billing Coalition also argues that LECs will have the incentive and ability to favor their own services over those of competitors in the absence of mandated billing and collection for CPP.[111]

US West brings a different perspective to this issue but, in Pilgrim's view, ultimately (if inadvertently) proves the same point as its opponents. US West vigorously argues that the Commission should not require the LECs to "associate" with unaffiliated parties on the bills that LECs issue to their customers.[112] US West tells us that this is because "LECs are going to want to differentiate themselves from other providers who will be their competitors[,]" and to bundle their billings "into packages that include a range of telecommunications and non-telecommunications offerings."[113] Given these business plans, US West argues that "[i]t would be terrible public policy for the Commission to hold LECs' billing to their own customers hostage to a requirement that they bill for others when they bill for themselves or their affiliated companies. Such is not fairness but regulatory blackmail."[114]

Pilgrim believes that the weight of the evidence in the record of this proceeding cuts against the US West arguments. We have argued here and in our earlier comments that public

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[110] AT&T Comments at 8.

[111] Billing Coalition Comments at 7. The Billing Coalition also alleges that Bell Atlantic, SBC, and BellSouth have instituted moratoria on new party billing on their local exchange bills, and that competitors are denied access to LEC bills "for receiving even a minuscule number of complaints." *Id*. at 8. The Billing Coalition concludes that LECs can gain a significant competitive advantage if they are successful in driving competitive services off the local bill. *Id*.

[112] US West Comments at 22.

[113] *Id*. (footnote omitted).

[114] *Id*.

policy requires that the Commission mandate LEC billing and collection because CMRS providers will not be able to market CPP, and its potential to benefit consumers and competition will be lost, without access to LEC billing and collection services. Moreover, LEC control of this billing and collection infrastructure gives the LECs considerable market power.

Coupled with these considerations is the fact that the point of view expressed by US West brings special emphasis to the concern raised by the Billing Coalition and others that LECs have a motive to keep competitors off their local exchange bills. US West's comments prove this point. In Pilgrim's view, the Commission can find US West's arguments to be reasonable only if the Commission also overlooks the fact that the LECs' billing and collection infrastructure was funded by monopoly ratepayers, that local exchange markets are not competitive, and that LECs wield considerable market power with respect to CPP billing and collection. If these facts are not overlooked, then it is difficult to ignore the anti-competitive motives that would likely lead to excessive billing and collection rates (if LEC billing and collection is mandated without any pricing safeguards), or to blink the fact that US West has described the motives that LECs may have to leverage their control of the local bill in order to gain a competitive advantage in their marketing of a range of telecommunications and non-telecommunications offerings.[115]

B. The Commission Alternatively Has Sufficient Statutory Authority To Require Incumbent Local Exchange Carriers To Provide Billing and Collection as an Unbundled Network Element

[115] These facts, in Pilgrim's view, also answer an argument advanced by Washington UTC that "[r]equiring LECs to provide specific billing and collection services would place a burden on LECs that other billing and collection service providers do not face." Washington UTC Comments at 5. Establishing CPP billing and collection requirements that are applicable only to LECs is a justifiable public policy because the LECs wield power in the CPP billing and collection market that is not matched by any alternative provider of billing and collection. Also see the discussion in note 116, *infra*.

Although Pilgrim believes that the Commission's ancillary jurisdiction provides a sufficient basis to establish LEC billing and collection requirements, we also endorse suggestions made in the record[116] that the Commission has authority under Section 251 of the Act to require ILECs to make billing and collection services available on an unbundled basis.[117]

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[116] *See* PCIA Comments at 44-51. We also note in passing that BellSouth has argued that "[w]hether the provision of billing information can be considered a UNE is ultimately irrelevant" because "[a]ny decision to apply mandatory billing and collection to ILECs *alone* [under Section 251 of the Act] would be arbitrary and capricious and constitute reversible error." BellSouth Comments at 3-4 (emphasis added) (footnote omitted). BellSouth seeks to explain this assertion by observing that ILEC and non-ILEC carriers "are identically situated with regard to the CPP call, and . . . must be treated alike as far as any billing and collection is concerned." *Id*. at 3. BellSouth does not proceed any further with this legal analysis.

In Pilgrim's view, BellSouth's argument is inviting the Commission to peer through the wrong end of the looking glass. The question is not whether ILECs and non-ILECs are identically situated with regard to the CPP call (as BellSouth would frame the issue), but whether ILECs and non-ILECs are identically situated with regard to the nature and extent of billing and collection resources they control. Clearly, they are not.

The Supreme Court has held that, as long as the agency offers a reasoned explanation for its action, based upon the evidence before it, the decision will not be considered arbitrary and capricious. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins., 463 U.S. 29, 43 (1983), *cited in* Adams v. Environmental Protection Admin., 38 F.3d 43, 49 (1st Cir. 1994) ("A court should not set aside agency actions as arbitrary and capricious unless the actions lack a rational basis."). The courts have also held that, when there are demonstrable differences between parties subject to regulation by the same agency, different regulatory treatment is permissible. *See* SRS Technologies v. United States, 894 F.Supp. 8, 12 (D.D.C. 1995).

In view of the evidence before the Commission in this proceeding, BellSouth cannot make a showing that requiring ILECs to provide billing and collection as a UNE, but not imposing a similar requirement on other carriers, would lack a rational basis. BellSouth's comments disregard the ILECs' market power regarding CPP billing and collection as well as the specific intent of Congress and the Commission to move toward a new competitive model, and, in doing so, to open up access to the ILECs' monopoly-controlled networks. *See, e.g., Local Competition Order*, 11 FCC Rcd at 15505 (para. 1) (the 1996 Act abandons reliance upon regulated monopoly networks and instead "requires telephone companies to open their networks to competition."). Section 251 of the Act is intended to apply special duties and obligations to ILECs based upon their market power. Through their market power, ILECs acquired economies of density, connectivity, and scale that gave them competitive advantages in local exchange markets. *See id.*, 11 FCC Rcd at 15508 (para. 11). ILECs continue to exercise significant power in the CPP billing

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Two issues arise in examining whether the Commission should take such an action. First, it must be determined whether billing and collection falls within the statutory definition of "network element," thus subjecting billing and collection to the provisions of Section 251(c). Second, if billing and collection can reasonably be classified as a network element, then the Commission must determine whether public policy requires the availability of billing and collection on an unbundled basis in accordance with the terms of Section 251(d).

1. Billing and Collection Is Included in the Statutory Definition of "Network Element"

The statute defines "network element" to mean:

> a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including

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and collection market, based upon their widespread service areas and the commanding size of their customer bases. Non-ILECs are not similarly situated, in that they do not control a billing and collection apparatus of sufficient size and scope to provide them with market power with regard to furnishing billing and collection for CPP. It is this difference in market power between ILECs and non-ILECs with regard to CPP billing and collection that justifies a public policy under which ILECs are obligated to provide CPP billing and collection as a UNE under Section 251, while non-ILECs may (in the Commission's discretion) be spared any similar obligation that could be imposed through an exercise of the Commission's ancillary jurisdiction.

[117] The Commission sought comment in the *CPP Rulemaking Notice* regarding whether billing and collection information should be made available as a UNE under Section 251(c)(3) of the Act, and also noted that it planned to apply criteria developed in actions taken by the Commission in another proceeding based upon the *UNE Second Notice* for purposes of determining whether such information should be unbundled under the "necessary" and "impair" standards in Section 251(d)(2) of the Act. *CPP Rulemaking Notice* at para. 66 (citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (*UNE Rulemaking Proceeding*), Second Further Notice of Proposed Rulemaking, FCC 99-70, released Apr. 16, 1999) (*UNE Second Notice*)). The *UNE Second Notice* was adopted by the Commission in the wake of a remand decision by the Supreme Court in AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999) (*Iowa Utilities Board*). The Commission adopted rules based upon the *UNE Second Notice* in an action voted by the Commission on September 15, 1999. *See* Federal Comm. Comm'n News Release, "FCC Promotes Local Telecommunications Competition," Sept. 15, 1999. This Order has not yet been released by the Commission.

> subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.[118]

On the face of this statutory language it is reasonable to classify billing and collection service as a network element, since the service constitutes a feature, function, or capability that is provided by a facility or equipment that in turn is used in the provision of a telecommunications service. Facilities or equipment used to provide a telecommunications service must reasonably be considered to include those facilities and equipment that are used to bill and collect for the service. Telecommunications services are defined by the statute as offerings of telecommunications for a fee.[119] In order to offer telecommunications for a fee, the telecommunications carrier must have the capacity to bill and collect for the offering. Thus, this fee collection capability is incorporated into the meaning of the term "telecommunications service," making billing and collection a feature, function, or capability that is provided by a facility or equipment used to provide the service.

Such a reading of the definition of "network element" gains further strength from the manner in which the Supreme Court has interpreted the statutory term. The Supreme Court has found that:

> Given the breadth of this definition [of "network element"], it is impossible to credit the incumbents' argument that a "network element" must be part of the physical facilities and equipment used to provide local telephone service. Operator services and directory assistance, whether they involve live operators or automation, are "features, functions, and capabilities . . . provided by means of" the network equipment. OSS [operational support systems], the incumbent's background software system, contains essential network information as well as programs to manage billing, repair ordering, and other

[118] Section 3(29) of the Communications Act, 47 U.S.C. § 153(29).

[119] Section 3(46) of the Communications Act, 47 U.S.C. § 153(46).

functions.[120]

The Supreme Court has thus endorsed a broad reading of the statutory term, and has specifically concluded that a network element does not need to be part of a physical facility or equipment.[121]

Moreover, we agree with PCIA that the specific reference to "information sufficient for billing and collection" in the definition of "network element" should not be read restrictively to exclude aspects of billing and collection other than the information necessary to bill and collect for telecommunications services.[122] Since, as we have already demonstrated, it is reasonable to construe billing and collection services as features, functions, and capabilities used in connection with the provision of telecommunications service, there must be some special reason to conclude that Congress, in noting that these features, functions, and capabilities "include" information sufficient for billing and collection, must also have intended to "exclude" billing and collection itself as a network element.

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[120] *Iowa Utilities Board*, 119 S.Ct. at 734.

[121] Pilgrim also believes that the Commission's interpretation of the definition supports our view that it can include billing and collection. The Commission has indicated:

> We disagree with those incumbent LECs which argue that features that are sold directly to end users as retail services, such as vertical features, cannot be considered elements within incumbent LEC networks. If we were to conclude that any functionality sold directly to end users as a service, such as call forwarding or caller ID, cannot be defined as a network element, then incumbent LECs could provide local service to end users by selling them unbundled loops and switch elements, and thereby entirely evade the unbundling requirement in section 251(c)(3).

Local Competition Order, 11 FCC Rcd at 15633-34 (para. 263) (footnotes omitted).

[122] *See* PCIA Comments at 44 & n.115.

Although it is difficult to imagine such an interpretation, one might be persuaded at first blush that the canon of statutory construction, "*inclusio unius est exclusio alterius*,"[123] in fact requires such a reading of the definition. Under this maxim, the fact that Congress specifically included a number of features, functions, and capabilities in the definition would mean that Congress intended to exclude all other features, functions, and capabilities. The canon, however, is given little force in the administrative setting, where courts defer to an agency's interpretation of a statute unless Congress has directly addressed the precise question at issue.[124] Moreover, "[i]t is universally held that this maxim is a guide to construction, not a positive command. . . . Whether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look to the statute as a whole."[125]

When looking at the Communications Act as a whole, one notices that, in cases in which Congress sought to specifically include enumerated items but also to exclude other items, it was careful to make that intention clear. For example, in defining the term "information service," Congress provided that the term:

> *means* the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, *and includes* electronic publishing, *but does not include* any use of any such capability for the management, control, or operation of a telecommunications system or the manage-

[123] The inclusion of one is the exclusion of another. The maxim is sometimes given as "*expressio unius est exclusio alterius*" — the expression of one is the exclusion of others.

[124] *See* Mobile Comm. Corp. v. Federal Comm. Comm'n, 77 F.3d 1399, 1404-05 (D.C.Cir. 1996), *cert. denied sub nom.* Mobile Telecomm. Technologies v. Federal Comm. Comm'n, 519 U.S. 823 (1996), *cited in Section 255 Order* at para. 104 & n.242.

[125] Massachusetts Trustees of E. Gas & Fuel Assoc. v. United States, 312 F.2d 214, 220 (1st Cir. 1963) (citing Springer v. Government of the Phil. Is., 277 U.S. 189 (1928)).

ment of a telecommunications service.[126]

Thus, Congress made sure to be specifically clear on the face of the definition that its intent was not to include capabilities for managing telecommunications systems and services in the definition of information services. Similarly, nine paragraphs later in the same section of the Act, Congress could have specifically stated that the definition of "network element" does not include billing and collection. The fact that it did not choose to do so gives additional force to the construction that its listing of certain features, functions, and capabilities in the definition was not intended to be exhaustive.

Some opponents of a LEC billing and collection requirement offer up an interpretative argument in an effort to convince the Commission that billing information is outside the definition of "network element." Since these parties presumably intend this line of argument to encompass billing and collection as well as billing information, the merits of the argument should be explored here in the context of our discussion of the bases upon which the Commission should order the availability of billing and collection as a UNE.

Bell Atlantic, for example, presents the argument as follows: If a carrier purchases unbundled access to a physical element of a LEC network, then the carrier also is entitled to acquire features, functions, and capabilities of that element. On the other hand, Bell Atlantic argues, billing information, standing alone, is not a separate network element and therefore is not subject to any statutory unbundling requirements. Since, according to Bell Atlantic, CMRS carriers would

[126] Section 3(20) of the Communications Act, 47 U.S.C. § 153(20) (emphasis added).

not purchase any physical elements of the telephone network on an unbundled basis to handle CPP calls, they are not entitled to any billing information as a UNE.[127]

But, as we have discussed,[128] the Supreme Court has concluded that "it is impossible to [argue] that a 'network element' must be part of the physical facilities and equipment used to provide local telephone service."[129] Bell Atlantic seems to maintain that, since billing information is defined as a feature, function, or capability that is provided *by means of* a network facility or equipment, then billing information loses its status as a network element if it is bought separately from the facility or equipment. It can remain within the circle of network elements, Bell Atlantic seems to suggest, *only* if it is bundled with network facilities or equipment.

Bell Atlantic does not attempt to explain how its interpretation can be squared with the ruling of the Supreme Court, and it is difficult to discern how this task could be accomplished. There simply is no basis for the argument that billing information (or billing and collection services) must move into or out of the definition of "network element" depending upon whether they are sought to be acquired in conjunction with a network facility or equipment. This linkage is a figment of Bell Atlantic's imagination, since it has no basis in the statutory definition.

Under that definition, a feature, function, or capability that is provided by means of a facility or equipment used in the provision of a telecommunications service *is* a network element. The definition does not say that network elements include features, functions, and capabilities provided by means of network facilities or equipment *but only to the extent they are acquired to-*

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[127] Bell Atlantic Comments at 8. *See* Cincinnati Bell Comments at 8-9; GTE Comments at 36; NTCA Comments at 8-9; USTA Comments at i.

[128] See the text accompanying note 120, *supra*.

[129] *Iowa Utilities Board*, 119 S.Ct. at 734.

gether with the facilities or equipment. Bell Atlantic is asking the Commission to read that language into the definition, but there is no basis for doing so. Once a feature, function, or capability is defined as a network element, there is no way to "undefine" it. And, once the feature, function, or capability fits within the definition of a network element, it becomes subject to the provisions of Section 251.

2. Billing and Collection Should Be Made Available on an Unbundled Basis Pursuant to the Criteria Established in Section 251 of the Act

We next turn to the question of whether public policy requires that, pursuant to Section 251(d), billing and collection must be made available as an unbundled network element. Section 251(d)(2) provides that "in determining what network elements should be made available . . ., the Commission shall consider, at a minimum, whether . . . (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[130]

Pilgrim agrees with PCIA's analysis that ILEC billing and collection services cannot be considered to be proprietary, which leads to the conclusion that the "necessary" standard of Section 251(d)(2)(A) is not applicable to an evaluation of whether billing and collection should be made available on an unbundled basis.[131] We also agree with PCIA's assertion that the lack of ac-

[130] 47 U.S.C. § 251(d)(2).

[131] *See* PCIA Comments at 47 (characteristics of ILEC billing were developed as a result of ILECs' status as monopoly local exchange service providers, and are not due to "particular capital investments, unique proprietary software or research and development efforts.").

cess to the billing and collection element by CPP providers would satisfy the "necessary" standard if the standard were applicable.[132]

In the *UNE Rulemaking Proceeding* Pilgrim proposed the following standard for purposes of deciding whether access to a network element should be provided under the "impair" standard of Section 251(d)(2)(B):

> *A competitor's ability to provide communications services is materially impaired if the denial of access to a UNE causes (1) an increase in costs or a decrease in quality that is not inconsequential or unimportant; or (2) a change in the way the competitor provides its service or conducts its business.*[133]

Given the pivotal importance of ILEC billing and collection to the viability of CPP, it is reasonable to conclude that CMRS carriers would suffer the impairment defined by Pilgrim's proposed test if billing and collection were not made available as a UNE. There is overwhelming and incontrovertible evidence in the record of this proceeding that the cost of providing CPP would be higher in the absence of ILEC billing and collection. If CMRS providers were to attempt to offer CPP without ILEC billing and collection, the quality of the service would be impaired because, for example, the service might not be made available in areas in which ILECs refuse to bill and collect (since the CMRS carrier would have insufficient alternative means of billing and collecting from calling parties in those areas). The overall quality of a CMRS carrier's services would also be decreased if, for example, the carrier chose not to offer CPP at all due to the unavailability of ILEC billing and collection.

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[132] *Id.*

[133] *UNE Rulemaking Proceeding*, Pilgrim Comments, filed May 26, 1999, at 15 (italics added).

Similarly, the way in which the CMRS carrier provides its service or conducts its business would be impaired by lack of access to ILEC billing and collection for the reasons we have illustrated. The nature in which the carrier provides its CPP offering would likely be degraded if the carrier were forced to rely upon non-ILEC billing and collection arrangements. Ultimately, the offering would not be sustainable in the marketplace because of the prohibitive costs associated with non-ILEC billing and collection.

Recognizing the Commission's intent to apply criteria developed in the Order adopted last month[134] to the issue of whether billing information should be made available on an unbundled basis,[135] we urge the Commission also to consider the advisability of making billing and collection services for CPP available as UNEs, and we endorse PCIA's conclusion that, "under virtually any reasonable reading of the statute, and under any conceivable criteria the FCC has adopted, the FCC will be able to determine that ILEC billing and collection services should be identified as a network element to be unbundled under Section 251(d)(2) . . . ."[136]

V. THE COMMISSION SHOULD ADOPT ITS PROPOSAL FOR CALLING PARTY NOTIFICATION

The fundamental changes that CPP will make to the conventional means of billing for wireless calls[137] make it important for the Commission to ensure that consumers are advised of these changes, and that calling parties are provided with sufficient information and opportunity to decide whether to incur charges by placing calls to CPP subscribers. The issue is significant both

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[134] See note 117, *supra*.

[135] *CPP Rulemaking Notice* at para. 66.

[136] PCIA Comments at 46-47.

[137] *See CPP Rulemaking Notice* at para, 42; Joint Parties Comments at 6-7.

from the perspective of consumer protection and from the perspective of the workability and marketability of the CPP offering. The Commission bears a responsibility to ensure that carrier practices do not harm or disadvantage consumers, and that consumers can avail themselves of carrier facilities and services armed with the tools needed to make intelligent, informed decisions. The other side of this same coin is the fact that, if CPP is brought to the marketplace without sufficient features and safeguards to provide these consumer protections, then not only will consumers be harmed, but CPP ultimately will not gain consumer acceptance and will fail in the marketplace.

These considerations led the Commission to fashion a strong and effective proposal for calling party notification. The Commission's proposal has garnered endorsement from a significant cross-section of commenters. Pilgrim believes that the Commission should press forward to adopt its proposal for a nationwide notification system, and at the same time should reject suggestions made in the record for alternative mechanisms that would not serve as well as the Commission's proposal to protect consumers and secure the marketability of CPP.

A. There Is Strong Record Support for a Nationwide Notification System

As Pilgrim noted in our comments,[138] a uniform, nationwide method for informing calling parties through a recorded message that they are placing a call to a CPP subscriber has two principal advantages, in contrast to an approach that would permit state-by-state (or carrier-by-carrier) differences or variations in the form or content of the message.[139]

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[138] *See* Pilgrim Comments at 39.

[139] We do suggest that the Commission, in adopting a uniform recorded notification text, should also permit carriers to make additions to the text to inform calling parties about additional billing options or enhanced service options that are available for contacting the called party. See Section V.B.3, *infra*. We believe that such additions would serve to better inform and protect consumers.

A uniform notification system will benefit consumers because it will ensure that all consumers are protected by the notification requirements prescribed by the Commission, and will also minimize any customer confusion that could be engendered by different notification messages required by different States or implemented by different carriers. Moreover, a uniform, nationwide system would be easier and less expensive for carriers to implement, which in turn would tend to facilitate the nationwide CPP offerings. Thus, less expensive and more widely available CPP services could be provided to consumers.

These advantages of a uniform, nationwide notification system have been widely recognized in the record.[140] PCIA, for example, points out that "a national approach to notification would support the large-scale implementation of CPP throughout the country and likely reduce the costs and complexity of providing whatever CPP notifications the Commission deems necessary."[141] Moreover, we agree with the concerns raised by AirTouch that:

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[140] *See, e.g.*, AARP Comments at 3; AirTouch Comments at 39; AT&T Comments at 5 ("if each state is allowed to impose its own requirements, the resulting confusion would pose a potentially insurmountable barrier to mass acceptance of CPP and dramatically increase carrier costs"); Bell Atlantic Comments at 2; Cable & Wireless Comments at 2; Federal Trade Commission (FTC) Comments at 12; GTE Comments at 16, 22; Motorola Comments at 5; NTCA Comments at 2; PCIA Comments at 24; Qwest Comments at 6; RTG Comments at 3; Sprint Comments at 2; USCC Comments at 6; University of Michigan (Michigan) Comments at 1, 4; US West Comments at 2. *See also* Florida PSC Comments at 3 (supporting the preservation of State jurisdiction, but expressing uncertainty regarding whether additional State-specific notification requirements could be implemented as a practical matter due to technical limitation); Nextel Comments at 7, 10 (opposes a verbal notification, but notes that, if the Commission adopts such a requirement, it should be applied uniformly throughout the Nation); Wisconsin Public Service Commission (Wisconsin PSC) Comments at 3 (welcoming "the invitation the FCC has offered states to cooperatively establish the notification standards"). *But see* California Comments at 3-4 (Commission should establish minimum notification standards that States could augment); Celpage Comments at 6; Leap Wireless International (Leap) Comments at 9; Ohio PUC Comments at 9; USTA Comments at 11; Washington UTC Comments at 3.

[141] PCIA Comments at 24.

> [a]bsent uniform [notification] requirements, . . . carriers could be required to develop and install a wide variety of software in their switches to handle different state-mandated notification messages or methods, train and educate customer care representatives on the variety of notification messages, and therefore lose some of the efficiencies gained from a multi-state regional service structure, vastly increasing the costs of CPP.[142]

Moreover, Pilgrim agrees with those commenters who have argued that the Commission has ample statutory authority to establish a uniform, nationwide framework for notification.[143] We thus urge the Commission to conclude that there is sufficient record support, as well as a sound statutory and public interest basis, for the Commission to proceed with the prescription of such a notification system.

B. The Proposed Notification System Will Protect Consumers Without Imposing Unnecessary Burdens or Costs Upon Wireless Carriers

Although a number of parties rehash in their comments some of the objections they had raised in earlier pleading rounds regarding the scope and contents of any notification message, the four-point calling party notification proposed by the Commission in the *CPP Rulemaking Notice*[144] has received substantial support in the record.[145] We address in the following sections the

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[142] AirTouch Comments at 39-40.

[143] *See* AirTouch Comments at 40; Bell Atlantic Comments at 3; CTIA Comments at 10-11; PCIA Comments at 25-27; Qwest Comments at 6; Sprint Comments at 2.

[144] The Commission proposed to develop a uniform, verbal notification announcement that would include the following elements: (1) an indication that the calling party is making a call to a CPP subscriber and will be billed for airtime charges; (2) an identification of the CMRS carrier; (3) a specification of the per minute rate and any other charges that the calling party will be charged; and (4) notice that the calling party may terminate the call before incurring any charges. *CPP Rulemaking Notice* at para. 42.

[145] *See, e.g.*, Bell Atlantic Comments at 2; California Comments at 9-10 (California has not required mandatory notice of per minute rates or other charges in its rules, but does not object to this Commission proposal); Celpage Comments at 6-7 (although Celpage does not support a

(continued . . .)

record support for specific aspects of the Commission's proposal, as well as the support for specific suggestions Pilgrim made in our comments.

1. The Provision of Specific Rate Information Is the Best Way To Safeguard Consumer Interests and Can Be Accomplished in a Manner That Minimizes Carrier Burdens

Pilgrim believes that a critical aspect of a successful and effective calling party notification message is the provision of specific information regarding rates that the calling party would be charged if the call to the CPP subscriber is completed.[146] The provision of this information will enable calling parties to decide whether they wish to complete the call and incur the associated expenses. Making specific rate information available in the notification also should have the effect of minimizing consumer complaints during the period after CPP is implemented, because calling parties will be informed of charges "up front," rather than learning about them in subsequently issued bills.

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nationwide notification system, if the Commission chooses to adopt such a system, then Celpage supports the four elements proposed by the Commission); CPI Comments at 4; Connecticut DPUC Comments at 4; FTC Comments at 12; Florida PCS Comments at 3; NTCA Comments at 2; RTG Comments at 3; SBC Comments at 11; Wisconsin PSC Comments at 3.

[146] As we have noted, many parties have also taken this position. See note 145, *supra*. In addition, the FTC has argued that:

> The main benefit of a disclosure would be to provide consumers with the material information necessary to decide whether to stay on the telephone or hang up before incurring charges. To make this decision, consumers would likely need accurate information about the cost that they will incur in placing *that particular call*. The FCC may wish to clarify that the disclosure would provide material information about the charges that will be incurred for that particular call.

FTC Comments at 13 (emphasis in original). *See* GWCA Comments at 2-3 (unpaginated); Ohio PUC Comments at 9; UCAN Comments at 2.

In turn, the availability of specific rate information should help contribute to the success of CPP offerings because it will engender a greater level of consumer understanding and acceptance, while at the same time forestalling customer resentment and displeasure that could be caused by unexpected bills and that could undermine the success of the offerings.

In advocating the disclosure of specific rate information, we recognize that there is debate regarding how "specific" this information can or should be.[147] In that regard, we believe that CTIA is mistaken in its claim that providing incomplete pricing information is inevitable in a CPP environment and also would be harmful to consumers.[148] As we noted in our comments, we believe that the best option for providing rate information would be for the notification to announce an overall per minute rate, calculated to include additional charges that may apply. The announcement could state, for example: "You will be billed 50 cents per minute for the call." The rate would include any additional charges (*e.g.*, roaming, long distance, or other charges) billed on a per minute basis. The announcement would not need to specify each of the separate components of the charge, because the caller would be apprised of the overall, "bottom line" per minute rate.[149]

We recognize that this approach would require facility capabilities to calculate the overall rate on a real time basis, but we believe that, to the extent such an approach is technically feasi-

[147] A number of parties have expressed concern about the disclosure of specific rate information in the calling party notification. *See, e.g.*, AirTouch Comments at 45; AT&T Comments at 5; GTE Comments at 18-19; Leap Comments at 9; Motorola Comments at 6; Nextel Comments at 9; Omnipoint Comments at 3; PCIA Comments at 27; VoiceStream Comments at 10-11.

[148] CTIA Comments at 23 n.56.

[149] Pilgrim Comments at 43-44.

ble,[150] it would constitute an optimal level of disclosure that would sufficiently inform calling parties of the charges they would incur if they chose to complete a call to a CPP subscriber. In our comments, we also advocated that the Commission should include a degree of flexibility in its notification requirements, to permit CMRS carriers to provide less than this optimum level of rate information.[151] We suggested such an approach because of our view that providing a lesser level of "real time" rate information might be more technically feasible for some carriers but would still provide data useful to the calling party in deciding whether to complete the call.

We believe that our preferred, "bottom line" option is as close to "full disclosure" as one would need to get in order to protect and serve the interests of consumers. Moreover, in response to CTIA's concerns that providing less than complete information would be harmful to consumers (because they would receive a misleading impression about the level of charges that might actually accrue), we believe that the two alternative rate disclosures we suggested in our comments, while not providing complete information regarding actual "bottom line" charges, still would provide

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[150] Pilgrim recognizes that parties have expressed concerns regarding the technical feasibility of providing specific, "real time" rate information, and we suggest that the Commission should consider engaging in further efforts to obtain data and expert evaluations regarding this question. *See* Cable & Wireless Comments at 3-4; PCIA Comments at 29; Sprint Comments at 5; US West Comments at 2 n.4.

[151] Under one alternative, the notification would announce the per minute airtime rate, and the maximum additional rate that could apply to the call if additional charges were to accrue, depending on the circumstances of the call. This approach would require facilities capable of calculating the overall rate that could apply, but would not require the technical capability to determine in real time whether additional charges would actually apply to the call. Under a second alternative, the notification would announce the per minute airtime rate, and also notify the caller regarding each per minute or per message rate that could apply to the call. This approach would require facilities capable of identifying the level of each additional charge, but would not require the technical capability to calculate the overall rate that could apply or the ability to determine in real time whether any additional charges would actually apply. *Id*.

useful information to assist the calling party in deciding whether to complete a CPP call, and thus must be viewed as being beneficial, rather than harmful, to consumers.[152]

CTIA seems to be of the view that the use of a tone to notify calling parties that they are making a CPP call is a better disclosure device than specific rate information because any effort to provide rate information will always be incomplete, and therefore misleading. But, as we have noted, we believe that our alternative rate disclosures illustrate rate announcements that cannot be characterized as misleading or harmful to consumers.

Moreover, we believe that use of a tone holds a higher potential for consumer harm than the "incomplete" disclosure of rate information.[153] In our view, a consumer is better informed by an announcement that specifies, for example, the basic per minute rate and advises that additional charges may also apply, than by a tone that, one might say, signifies nothing. The use of a tone, in fact, may simply "postpone" consumer harm, in that it could lead to consumer confusion and dissatisfaction upon receipt of the monthly bill that represents the first disclosure of charges, but occurs after the fact rather than before the fact.

2. The Provision of Specific Rate Information May Serve as a Sufficient Basis To Establish Privity of Contract

Pilgrim agrees with CTIA that "it is important to ensure at the outset that any agreements reached between a CMRS provider and a calling party under CPP create binding obligations on both parties. Such considerations are especially crucial in the CPP environment as CMRS carriers

[152] *See* Ohio PUC Comments at 10 (if specific rates cannot be provided, callers should be advised of the highest per-minute and non-recurring charges that could be rendered for the call).

[153] Some commenters have expressed their opposition to use of a tone as a notification mechanism. *See* NTCA Comments at 3; SBC Comments at 12 n.19 (use of a tone would not be sufficient to establish privity of contract).

will likely have no pre-existing relationship with the calling party."[154] We also agree with the Commission's suggestion that "providing the caller the rates, terms, and conditions prior to the completion of a call would establish an enforceable contract between the caller and the carrier."[155]

Moreover, Pilgrim believes that the Joint Parties are correct in pointing out that a more stringent set of principles for privity of contract needs to be developed for CPP, in contrast to interexchange casual calling, because of differences between the two types of service.[156] With interexchange casual calling, the Joint Parties observe, calling parties always have the option of obtaining an IXC calling card; the calling party can select the network in advance, and can identify call charges in advance. The CPP calling party does not have such options.[157]

In these circumstances it becomes important for the Commission to ensure that sufficient mechanisms are in place to establish a contractual relationship between the CMRS provider and the calling party. The absence of such a relationship would threaten the viability of CPP offerings

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[154] CTIA Comments at 28.

[155] *CPP Rulemaking Notice* at para. 51 (footnote omitted) (citing Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014, 15031-32 (para. 28) (1997) (*Casual Calling Reconsideration Order*)). Pilgrim recognizes that some parties have argued that it is also necessary to establish privity of contract between the CMRS carrier and the party who has subscribed for the phone service used by the calling party in placing a call to a CPP subscriber. *See, e.g.*, Ad Hoc Telecommunications Users Committee and Association of Telecommunications Professionals in Higher Education (Ad Hoc Users) Comments at 11-12 (fundamental fairness requires that parties who will be charged for calls must have privity with the billing carrier; if the calling party is different from the billed party, the billed party, *e.g.*, an institutional subscriber, must be in privity with the wireless carrier); American Hotel & Motel Association (AHMA) Comments at 2; FTC Comments at 31-33. We discuss CPP issues relating to institutional and similar subscribers in Section V.C., *infra*.

[156] Joint Parties Comments at 32.

[157] *Id*. at 32-33.

because it would call into question the entitlement of the carrier to collect a fee for services provided to the calling party.

In Pilgrim's view, there is a ready solution to this problem. As the Commission observed in the *Casual Calling Reconsideration Order*, providing information regarding rates, terms, and conditions to the calling party prior to completion of the CPP call may serve as a sufficient basis for establishing a contractual relationship. In this regard, it becomes important, we believe, for the rate information to be as detailed as possible.[158] Pilgrim has proposed that a "bottom line" rate quote should be provided to the calling party in real time, so that the calling party is informed of the per minute rate that will actually apply and that includes all rating elements that are applicable to the particular call. We believe that rate information crafted with this level of precision and accuracy would strengthen the argument that the calling party is making an informed decision to enter into a contract with the CMRS carrier if the calling party chooses to complete the call.

The reverse of this proposition is also true, and presents a risk for CMRS carriers. The more general the rate information becomes (or the more inaccurate or incomplete it becomes), the greater the likelihood that the calling party will not be able to make an informed decision to enter into a contract and the greater the possibility that the CMRS carrier will be barred from relying on privity of contract as a basis for seeking to collect charges from the calling party.[159]

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[158] *See* California Comments at 10. *But see* GTE Comments at 25-27.

[159] In addition, Pilgrim agrees with SBC that use of a tone or dedicated service codes would not be sufficient to establish privity of contract. SBC Comments at 12 n.19.

3. Uniform Notification Text Developed by Commission and State Staff Should Be Used as a "Safe Harbor" To Satisfy the Commission's Consumer Protection Objectives But Carriers Also Should Have Flexibility To Add to the Text

As Pilgrim has noted,[160] many parties have endorsed the four elements proposed by the Commission for calling party notification. One of the key issues relating to implementation of the four notification elements proposed by the Commission involves the actual text used to communicate the information encompassed in the four elements. The Commission must resolve whether all CMRS carriers should be required to utilize the same text for the notification message and, if so, the Commission also must decide how that text should be developed and prescribed.

Pilgrim supports the use of a standard text by all CMRS carriers as a "safe harbor" that would demonstrate compliance with the Commission's four notification elements. As we will discuss below, we also suggest that carriers be given the flexibility to add to the text in order to describe features of their CPP offering that may not be sufficiently encompassed by the Commission's prescribed text.

We support standardized text as a "safe harbor" because we believe that the universal use of a standard text would benefit consumers by eliminating any confusion that could be caused by the use of different messages. Such an approach would also eliminate the possibility of any disputes arising from contentions that the message developed and used by a CMRS carrier is not in compliance with the notification requirements. Removing the prospect of such disputes would in turn prevent the imposition of costs upon CMRS carriers caused by the need to defend against such non-compliance claims.

With regard to the actual text that should be employed, Pilgrim notes that staff of the Policy Division, Wireless Telecommunications Bureau, has worked with staff of the Georgia Public Service Commission, the Iowa Utilities Board, the Montana Public Utilities Commission, the Nevada Public Utilities Commission, and the Wisconsin Public Utilities Commission to develop specific language reflecting the four elements of the proposed uniform notification announcement.[161]

The discussions have led to tentative concurrence with respect to the following language:

> You are calling a customer of the wireless carrier [state name of the carrier]. The customer has chosen to have callers pay for [insert all the elements that will be charged as a separate line item to the caller, such as air time, roaming, long distance, etc.] If you complete this call you will be charged on your [insert where caller will be billed, such as local telephone bill, credit card bill, wireless carrier bill, etc.] $x.xx per minute, in addition to any charges by your chosen carrier for the local or toll call to reach this number. Press 1 if you agree to accept these charges, or hang up now to avoid any charges.[162]

Pilgrim believes that the message options we proposed in our comments[163] are consistent with the proposed language,[164] and it also is our view that the proposed language represents an effective

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[160] See notes 145, 146, *supra*.

[161] *See* Joseph Levin, Notice of Ex Parte Presentation — Oral Presentation with NARUC Representatives in Calling Party Pays Service Offering in the Commercial Mobile Radio Service, WT Docket No. 97-207, filed Sept. 17, 1999; David Siehl, Notice of Ex Parte Presentation — Oral Presentation with NARUC Representatives in Calling Party Pays Service Offering in the Commercial Mobile Radio Service, WT Docket No. 97-207, filed Sept. 17, 1999 (Siehl Ex Parte). CTIA has raised a procedural issue regarding the staff discussions reflected in the ex parte filings, and has requested that an erratum be filed clarifying the record of the proceeding. Letter from Brian Fontes, Senior Vice President for Policy and Administration, CTIA, to Thomas Sugrue, Chief, Wireless Telecomm. Bur., Federal Comm. Comm'n (Oct. 4, 1999).

[162] Siehl Ex Parte at 2 (minor typographical changes have been made in the text as it appears in the Siehl Ex Parte).

[163] Pilgrim Comments at 42-44; see pages 58-60, *supra*.

means of communicating to calling parties pertinent information that will enable them to make informed decisions regarding whether to complete calls placed to CPP subscribers. The text is particularly helpful in advising the calling party regarding the vehicle to be used in billing for the call, since this will likely reduce subsequent customer confusion and dissatisfaction upon receipt of the bill.

Although we suggested in our comments that carriers should be given flexibility to give calling parties either a "positive" or "passive" means of completing calls,[165] we support the approach taken in the proposed language, whereby the calling party would be instructed to press "1" to accept the charges and complete the call, or to hang up to avoid any charges.

Pilgrim also suggests, however, that a CMRS carrier be given the flexibility to add to the Commission's prescribed announcement text to the extent such additions are necessary or appropriate to advise the calling party of innovative features of the carrier's CPP offering.[166] For example, the carrier might provide the calling party with a menu of billing choices that could be re-

[164] Our first option most closely resembles the type of rate information that would be captured in the per minute rate by the proposed text, except that our option would include other carriers' local or toll charges (to the extent they are billed on a per minute basis) in the "bottom line" per minute rate, if such a calculation is technically feasible, while the proposed language would separately state the possible applicability of these other carriers' charges.

[165] Pilgrim Comments at 45-46.

[166] We believe this suggestion is consistent with the approach to which Commission and State public utilities commission staff tentatively concurred. The Siehl Ex Parte indicates that the staff "tentatively concurred that a notification announcement would in some way *include* the . . . language" which is then set out. Siehl Ex Parte at 2 (emphasis added). Thus, the staff seems to contemplate that the standardized text could also include additional information.

flected in the recorded message.[167] To take another example, a CPP provider with the capability of offering additional services (including enhanced services) might include a menu of additional selections for the calling party, which would be reflected in the recorded announcement. Thus, for example, if the called party is not available at the time the call is placed, the carrier might want to offer the calling party a choice of voicemail at no charge, text dispatch service at one price, or numeric paging at another price.

Pilgrim believes that flexibility is necessary to enable carriers to reflect innovative aspects of their CPP offerings in the recorded message. The Commission could provide this flexibility by prescribing a "safe harbor" announcement, and then also specifying required elements of any additional text, as a means of safeguarding consumer interests.

Finally, we note that Sprint opposes the prescription of a specific message text because, according to Sprint, carriers require the flexibility to modify the text over time in order to deal with customer reactions as the carriers' CPP offerings evolve in the marketplace.[168] Although, as we have discussed, Pilgrim believes that the better public policy is to establish a uniformly applicable text, we believe our proposal that this standard text be used as a "safe harbor," and that carriers be given flexibility to add to the standard text, would be responsive to the concerns raised by Sprint. There also may be additional ways to accommodate these concerns.

For example, if the Commission does prescribe a standardized text, it could delegate to the Wireless Telecommunications Bureau the authority to revise the text from time to time, in re-

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[167] The calling party could be given the option to bill to his or her phone number, to bill to a credit card, to enter a PIN to have the call billed to the called party (see page 8, *supra*), or to use an announce-and-accept option that would treat the call in a manner similar to a collect call.

[168] Sprint Comments at 4 n.11.

sponse to requests and suggestions from State agencies, consumers, or the telecommunications industry. The scope of the delegation would not include the authority to reduce or substantively modify the elements required by the Commission's prescribed notification, but the Bureau could make other changes in the text in response to reactions to the recorded announcement in the marketplace. Such an approach would ensure protection of consumer interests but would also facilitate text revisions without the need for a full-blown Commission rulemaking proceeding.

C. Other Methods of Providing Notification Would Not Provide Adequate Consumer Protection

A number of parties, in opposing the four-element verbal notification to calling parties proposed by the Commission, have offered alternative approaches to attempt to advise calling parties that they will incur charges if they complete calls to CPP subscribers,[169] and have suggested that any verbal notification requirement that the Commission may establish should be phased out after the CPP offerings have been in place for some period of time.[170]

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[169] *See, e.g.*, AirTouch Comments at 42 (CMRS carriers should be allowed to compete and experiment with various forms of notification to determine which are best received by consumers); CTIA Comments at 20 (the Commission does not need to regulate the notification announcement to the level of detail it has proposed; a more streamlined approach will better serve consumers and will avoid the impairment of CPP by well-meaning, but ultimately harmful, regulation); Nextel Comments at 3-5 (there is no need for any per-call recorded notification; bill inserts, informational mailings, and multi-media campaigns could be used; also could use 1+ dialing instead of any recorded message or tone, because this would be sufficient to alert the caller that he or she is making a "toll" call, even though CPP is different from toll or long distance calls); Omnipoint Comments at 4 (it would be sufficient to include an explanation of CPP in White Pages directories); USTA Comments at 11 (there should be an industry solution to notification); VoiceStream Comments at 11.

[170] *See, e.g.*, CTIA Comments at 21 (the Commission should permit use of a distinctive tone as the notification method, with a general recorded intercept message being used initially for an 18-24 month period); GTE Comments at 18-20; Nextel Comments at 8-9 (if the Commission does adopt a verbal notification requirement, it should be phased out in 18 to 24 months); Sprint Comments at 6 (notice requirement should sunset after 18-24 months; distinctive tone and identification of the CMRS carrier would then be sufficient). Other parties have opposed any

(continued . . .)

Pilgrim believes that all these alternative approaches should be rejected by the Commission because they afford a lesser degree of consumer protection than the approach proposed in the *CPP Rulemaking Notice*, they may prove insufficient to establish privity of contract between CMRS carriers and calling parties, and they may ultimately threaten the success of CPP in the marketplace because they could cause a "backlash" among calling parties and a resulting reluctance on the part of wireless customers to subscribe to the service.

With respect to the argument that the Commission's four-element notification requirements should be phased out over time after CPP is introduced, Pilgrim continues to oppose such an approach, and we believe that the FTC has suggested a much more prudent course of action. The FTC argues that the Commission should defer any decision whether to permit a streamlined notification system because it is premature at this time to anticipate that there may not be a need for the disclosure of complete rate information at some time in the future.[171] Given the important consumer protections that attach to the provision of specific rate information, together with the relevance of such information for the establishment of privity of contract between CMRS carriers and calling parties, Pilgrim agrees with the FTC that any relaxation of rate information requirements as part of the calling party notification should be the subject of a future rulemaking proceeding, as opposed to being built into the rules at this juncture.

Finally, several parties have urged the Commission to use special dialing patterns (such as 1+ dialing, special NXX codes, or service access codes (SACs)) as substitutes for the Commis-

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sunset date for the Commission's verbal notification requirements or any transition to a streamlined method of notification. *See, e.g.*, CPI Comments at 5; Connecticut DPUC Comments at 4; Joint Parties Comments at 4; NTCA Comments at 3; SBC Comments at 11; Washington UTC Comments at 4.

sion's proposed four-element notification, arguing that these methods would furnish sufficient notice to calling parties that they are placing CPP calls and thus will be subject to charges, and that the use of NXX codes or SACs would make it possible for organizations using private branch exchange (PBX) equipment or similar equipment to monitor and regulate the manner in which persons with access to the organizations' phones can place calls to CPP subscribers.[172]

Pilgrim agrees with the many parties who oppose these various alternatives.[173] The use of 1+ dialing would be a poor substitute for the direct provision of specific rate information to calling parties because it obviously would not impart any specific rate information and, for some calling parties, may not even be associated with toll calling, since 1+ dialing is currently being used in some areas for calls that do not entail any toll charges.[174] Pilgrim does agree with those parties who have suggested that CPP poses a potential problem for companies, government agencies, educational institutions, and other organizations using PBXs, because these organizations may find it difficult to restrict calls to CPP subscribers and thus may be billed for calls they have

[171] FTC Comments at 14; *see* Ohio PUC Comments at 11.

[172] *See* Ad Hoc Users Comments at 19; AHMA Comments at 3; California Comments at 16; Connecticut DPUC Comments at 5; Joint Parties Comments at 35-36; VoiceStream Comments at 11; Washington State Department of Information Services Comments at 1-2; Wisconsin PSC Comments at 4. *See also* Cable & Wireless Comments at 3 (supports use of special NXX code, but opposes use of 1+ dialing or special area codes); CPI Comments at 6-7 (opposes use of special codes, but favors use of 1+ dialing); Michigan Comments at 2 (favors use of SACs in the short term as a means of blocking CPP calls).

[173] *See* AirTouch Comments at 49; Ameritech Comments at 4; Bell Atlantic Comments at 4; CTIA Comments at 21-22; Florida PSC Comments at 3; GTE Comments at 21-22; NTCA Comments at 4; Nextel Comments at 6-7; Ohio PUC Comments at 11; USCC Comments at 7; US West Comments at 27.

[174] Bell Atlantic Comments at 4.

not expressly authorized.[175] We disagree, however, that special NXX codes or SACs should be used in order to solve this potential problem.

Employment of these special codes, for example, would risk seriously undermining the opportunity for CPP to succeed in the marketplace because wireless subscribers seeking to subscribe to CPP would need to change their wireless numbers in order to do so. In addition, a wireless customer seeking to terminate a subscription to CPP also would have to switch numbers, and this could serve to further discourage interest in signing up for the CPP option. Further, some parties have advocated the use of these codes so that PBX owners can block the capability to make CPP calls, but at least one institution using PBXs has expressed concern regarding the use of blocking as a long-term solution.[176] In addition, the use of such codes would not be consistent with the Commission's number portability policies, since numbers associated with special CPP codes could not be ported.[177]

VI. THERE IS NO NEED FOR THE COMMISSION TO REGULATE RATES FOR CALLING PARTY PAYS SERVICES

There is strong sentiment in the record in support of Pilgrim's position that the Commission should not regulate rates that CMRS carriers would charge calling parties for calls completed to CPP subscribers.[178] In Pilgrim's view, there are several reasons why the Commission should follow the weight of the record and refrain from any rate regulation regarding CPP at this time.

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[175] *See* Ad Hoc Users Comments at 4; Joint Parties Comments at 7.

[176] Michigan Comments at 3.

[177] *See* Ameritech Comments at 4; Florida PSC Comments at 3; Nextel Comments at 7.

[178] *See* AirTouch Comments at 57; Bell Atlantic Comments at 5; BellSouth Comments at 21; CTIA Comments at 31; GTE Comments at 28-29; Leap Comments at 12; Motorola Comments at

(continued . . .)

CMRS carriers do not have an incentive to attempt to charge excessive rates for their CPP offerings.[179] If rates are perceived to be too high by calling parties, or by prospective CPP customers, then the service will not be accepted in the marketplace. If the objective of CMRS carriers is to use the CPP option as a means of stimulating overall network usage, by encouraging their customers to keep their phones activated for greater periods of time[180] and to accept greater volumes of incoming calls, this objective obviously would be frustrated if rates perceived to be too high led to consumer rejection of the offering.[181]

In this regard, the argument that calling parties are "captive" callers because they cannot select the CMRS carrier does not seem to have much force. With respect to any given call, the calling party can disconnect if he or she decides that the announced charges are too high. Even if there may be some cases in which the calling party will be forced by circumstances to complete calls even though he or she finds the rates excessive, Pilgrim believes that, to the extent that many calling parties reach the same judgment regarding the overpricing of CPP calls, they will choose to reach CPP customers in other ways and this overall trend will lead to the failure of CPP in the marketplace. Avoiding such a scenario provides the incentive for reasonable CPP rates.

8; Nextel Comments at 11; PCIA Comments at 31. *But see* AARP Comments at 5; California Comments at 13; CPI Comments at 2, 8; Joint Parties Comments at 3; MCIW Comments at 16.

[179] *See, e.g.*, VoiceStream Comments at 11 (CMRS carriers have little or no incentive to charge exorbitant rates for CPP calls).

[180] Motorola has noted that part of wireless customers' reluctance to leave their phones turned on has been to conserve battery life, "but this is becoming less of a concern as battery technology improves." Motorola Comments at 3.

[181] CTIA Comments at 28 ("Because CPP is a means by which carriers can increase usage and promote efficient usage of available capacity, it is reasonable to expect that . . . low per-minute usage charges will be implemented for CPP.").

Moreover, in the unlikely case that CPP providers were to initiate and persist in attempts to charge excessive rates for CPP calls, the Commission could respond to consumer complaints by taking action to require the adjustment of CPP rates to reasonable levels. Rather than attempting to solve in advance a "problem" that might never materialize, a better course in this case would seem to be to provide CMRS carriers with the flexibility needed to price their CPP offerings in the manner they deem best suited to foster marketplace acceptance and to stimulate traffic on their networks, with the Commission reserving the option to act affirmatively if carriers' rate-setting practices demonstrate a convincing need for such action.

Finally, such an approach would be in keeping with long-standing Commission precedent regarding its approach to wireless services.[182] The Commission has never chosen to regulate the rates of services provided by wireless carriers, and its confidence that the marketplace and competition would serve to set reasonable CMRS rates has proven to be well-founded. Rather than break with this precedent, the Commission should continue to rely upon marketplace forces to be the best means of setting CPP rates at reasonable levels that will gain consumer acceptance.

VII. CONCLUSION

Calling Party Pays is the latest example of the ability of CMRS carriers to develop innovative offerings to meet consumer demand and to strive for a competitive edge in the marketplace. CPP illustrates the wisdom of the Commission's view that competitive forces can drive the expansion of wireless markets and benefit consumers. And CPP also holds the promise of helping to position wireless carriers for head-to-head competition against ILECs in local exchange markets.

[182] *See* CTIA Comments at 31 ("The unprecedented nature of the Commission's inquiry into regulating CPP rates cannot be overstated.").

But the Commission needs to act to make this happen. The availability of LEC billing and collection is the key to CPP market entry; without this LEC service CPP will be handcuffed from the start, and its potential competitive and consumer benefits will be lost. If the Commission seizes the initiative by giving CMRS carriers the necessary tools to bill and collect for CPP, and by crafting notification and other requirements that will ensure that consumers are well served as CPP offerings gain their marketplace entrance, then the Commission will again be successful in providing the leadership necessary to clear the path for the continued growth of competition in telecommunications markets.

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CERTIFICATE OF SERVICE

I, Joelle Zajk, a Professional Assistant with the law firm of Hunton & Williams, hereby certify that on October 18, 1999, a true and correct copy of the foregoing REPLY COMMENTS OF PILGRIM TELEPHONE, INC., were served by hand delivery upon the following:

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